Supreme Court, U.S.
FILED

OCT 25 2010

OFFICE OF THE CLERK

Case No. 10-599

In The
Supreme Court of the United States

MYRIAM ONYEABOR, *Petitioner*
Defendant and Third-Party Plaintiff

v.

CENTENNIAL POINTE
HOMEOWNERS'ASSOCIATION,
and LEBR & ASSOCIATES LLC., *Respondents*
Plaintiffs and Third-Party Defendants

On Petition from Utah Appellate Court

Petition for Writ of Certiorari
Denied at the Utah Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Myriam Onyeabor, pro se
P. O. Box 22244
Salt Lake City, Utah 84122
Phone 801-556-0426

ThunderGraffix Productions & Press.
869 E. 4500 S, Suite 157, SLC Utah 84108

QUESTIONS PRESENTED

ISSUE I: THE ASSOCIATIONS' AND LEBR'S LACK OF STANDING

Question #1: Did the Utah Appellate Court Violate Onyeabor's Fifth and Fourteenth Amendment Due Process Rights by Subjecting her to a Judgment When the Litigation was brought by an Association that was Defunct and thus did not have Standing to Bring Suit According to Substantive Utah Laws?

Question #2: Did the Utah Appellate Court Violate Ms. Onyeabor's Fifth and Fourteenth Amendment Due Process Rights by Allowing Unqualified Substitutes Association II and LEBR to Continue the Litigation brought by Defunct Association I Which did not have Standing or Rights to pass on, According to Substantive Utah Law?

Questions #3: Did the Utah Appellate Court Err When it failed to Apply Utah Supreme Court Case Law to the Purported Contract between Ms. Onyeabor and LEBR, Which would have Allowed Ms. Onyeabor to Annul Any Contract Because LEBR Posed as Defunct Association I?

ISSUE II: THE JUDICIAL TAKING OF MS ONYEABOR'S LOTS 1 AND 2

Question #1: The Utah Appellate Court redefined the concepts of "fee simple

ownership," "common areas," "lots," and the Plat Map, thus imposing common areas on Onyeabor's Lots 1 and 2 which were purchased as fee simple lots, depicted on the Plat. The Utah Appellate court also authorized enforcement of the Restated CC&R, which was created without the required city permit or conformance to Utah Laws or Ordinances, thereby, overriding or ignoring such substantive Utah laws. Did the totality of these actions cause a judicial taking of portions of Ms. Onyeabor's Lots without Due compensation, which is a violation of the Fifth and Fourteenth Amendments of the United States Constitution?

Question #2: Did the Utah Appellate Court's Decision and Order, Allowing the Permanent Conversion of 75% of Ms. Onyeabor's Fee Simple Ownership of Lots 1 and 2 into Common Areas, Without Due Compensation, Constitute a Judicial Taking, a Violation of Due Process Rights under the Fifth and Fourteenth Amendment Clauses of the United States Constitution?

Question #3: Whether the Utah Appellate Court's Conclusion That Ms Onyeabor Owns both her Lots "Fee Simple," as "described on the Plat," Warranted That Her Quiet Title Claims be granted, because Denial would Constitute Violations of Substantive Utah Laws and Ms Onyeabor's Fourteenth Amendment Due Process Rights?

Question #4: Even if the United States Supreme Court does not find a Taking on Both Lots, Would the Court Find That Taking Occurred on Lot 1?

ISSUE III: BREACH OF THE SEPARATION OF POWERS CLAUSE.

Question #1: The Utah Appellate Court authorized the amendment and rezoning of the Centennial Pointe Park Subdivision, installed common areas and community ownership rights on 75% of Ms. Onyeabor's Lots 1 and 2, without Due Process of Law, and in violation of Substantive Utah Laws and Municipal Ordinances, which are clear indications of Legislative Intent. Do these Court actions constitute a Breach of the Separation of Powers Clauses of the Utah and United States Constitution?

Question #2: Did the Utah Appellate Court Use Court Orders to Effectuate An Amendment and a Rezoning of the Centennial Park Commercial Subdivision, Both of Which are Tasks Exclusively Reserved to the Legislature, and by Grant of the Legislature, the County and Municipal Ordinances, thus Breaching the Separation of Powers Clauses of the Utah and United States Constitutions?

LIST OF PARTIES

MYRIAM N.ONYEABOR, *Petitioner.*
Defendant, Third-Party Plaintiff.
Hereafter known as Ms Onyeabor or Onyeabor.

CENTENNIAL POINTE HOMEOWNERS' ASSOCIATION, Plaintiffs and Third-Party Defendants, Founded November 29th 2004, *hereafter known as "Association II."* *Respondent*

CENTENNIAL POINTE HOMEOWNERS' ASSOCIATION Founded April 19th 2000, and permanently dissolved on September 27th 2001, *hereafter, known as Association I.* It initiated the lawsuit and was substituted for, by Association II and LEBR & Associates September 15th 2005, and is no longer party to the litigation.

LEBR & ASSOCIATES LLC, a Utah corporation Plaintiffs and Third-Party Defendants, hereafter known as "LEBR" Co-*Respondent*

TABLE OF CONTENTS

QUESTIONS FOR REVIEW. . . i-iv

LIST OF PARTIES. . . . v

TABLE OF CONTENTS . . . vi

INDEX TO APPENDICES . . viii-ix

TABLE OF AUTHORITIES . . x-xii

OTHER STATUTES, CODES AND RULES xiii-xiv

OPINIONS BELOW 1

JURISDICTION OF US SUPREME COURT . .1

CONSTITUTIONAL STATUTORY

PROVISIONS. 2

STATEMENT OF THE CASE. . . . 3

Summary of Arguments I . . . 11

ISSUE I, A Court's Lack of Jurisdiction Is an Issue of Law, Not Of Discretion. Utah Law Forbids The Use Of Substitution To Create Jurisdiction Where None Existed. Subjecting Ms Onyeabor to Such a Judgment Is a Violation of Her Due Process Rights

REASONS FOR GRANTING REVIEW:

ISSUE I 15

Summary of Arguments II . . . 19

ISSUE II, Questions 1, 2 & 3: : Utah Appellate Court Redefined Utah Property Laws and Caused the Judicial Taking of Parts of Ms Onyeabor's Lots in Violation of Fifth and Fourteenth Amendments of the United States Constitution.

REASONS FOR GRANTING REVIEW: ISSUE II 23

Summary of Arguments III 33

ISSUE III, Questions 1& 2: Utah Appellate Court Redefined Utah Property Laws, Usurped Roles That Are Unique Prerogatives of the Legislature and That Constitutes a Breach of the Separation of Powers Clauses

REASONS FOR GRANTING REVIEW: ISSUE III. 35

CONCLUSION 40

INDEX TO APPENDICES

Appendix A: Utah Appellate Court Opinion Was Dated December 13th 2009

Appendix B: Utah Appellate Court's Opinion denying Ms Onyeabor's motion for Rehearing and Motion to supplement evidence was dated January 05, 2010.

Appendix C: Opinion of the Utah Supreme Court Denying Onyeabor's Petition for A Writ of Certiorari Was Dated June 11th 2010

Appendix D: Salt Lake District Court Order for Substitution of Parties of September 15th 2005.

Appendix E: Salt Lake District Court's Order Granting Summary Judgment to Respondents Was Corrected and Dated January 28th 2008

Appendix F: Ms Onyeabor's Titles to Lots 1 and 2

Appendix G: Preservation of Issues

Appendix H: Constitutional & Statutory Provisions

Appendix I: DEFINITIONS of Rules, Codes, Ordinances and CC&R.

I (1) Rules

I (2) Codes and Ordinances

I (3) Covenants (CC&Rs)

Appendix J: Affidavit of Mr. Bezdijan

Appendix K: Salt Lake County Testimonies

K (1) Testimony by Mr. Wheelwright, Planning Commission Director
K (2) Testimony by the Salt Lake County.
K (3) the subdivision Permit

Appendix L (1): Onyeabor's Motion to Dismiss

Appendix L (2): Ms Onyeabor's Reply to Motion to substitute Parties.

Appendix L (3): Respondents Answer and motion to substitute parties

Appendix M: THE PLAT MAP-
M (1) Focus on Building one
M (2) Reduced Image showing Outline
M (3) Dedications (right of Plat)
M (4) Public easements (left of Plat)

Appendix N: Affidavit of Alexander Udeh.
Appendix O: Affidavit of Myriam Onyeabor
Appendix P#1, P#2, P#3, P#4: Blockade of front doors, trailers, signs on Onyeabor's buildings.

Appendix Q: Affidavit of James Walker

Appendix R: affidavit of Mr. Robert Mills

Appendix S: Affidavit of Mr. Travis Healey

TABLE OF AUTHORITIES

Aetna Casualty. v. Hillman, 796 F.2d 770, 774 (5th Cir. 1986). **15**

Amoco Production Company v. The United States Of America 619 F.2d 1383¶14. . . **18**

Allen v. Duvall, N.C. S Ct 1984)311 316 S.E.2d **29**

Bowen v. Riverton City, 656 P.2d 434, 436. (Utah 1982).. . . . . **11**

Bradley v. Payson City Corp (2003 S Ct UT) 70 P.3d. 47 ¶33 . . . . . **37**

Central Florida. Invs., Inc. v. Parkwest Assocs., 2002 UT 3, ¶12, 40 P.3d 599. . . . . **17**

Chicago, Burlington & Quincy Railroad Co. v. City of Chicago, 166 U.S. 226, 241 (1897). . . **25, 33**

Choate v. Home Builders. 222 F.3d 788 13 (10th Cir. 2000).. . . . . 18, 36

Flying Diamond Oil Corp. v. Newton Sheep Co., 776 P.2d 618, 622-23 (Utah 1989). . . . **29**

Graham v. Davis County Solid Waste Management An Energy Recovery Service District, App 136, 979 P.2d 363, 994 P.2d 1271(1999 UT). . . **14, 16**

Hatch v. Boulder Town Council, ¶ 9, 21 P.3d 245, 248 (Utah Ct.App.2001) Referenced by (2006 10th Cir.) 471 F.3d 1142, . . . **18, 21, 31, 39**

Jones v. Barlow, 20, P12 (UT 2007). . . **12**

Judd v. Gregory Drezga, (2004 S Ct UT) 91, 103 P.3d 135. . . . . **38, 40**

Loretto v. Teleprompter Manhattan Catv Corp, 458 U.S. 419 (1982). **20-33**

Lucas v. South Carolina Coastal Com'n. 505 U.S. 1003 (1992). **23, 24,** 26, 33, 34

Lunceford v. Lunceford, (2006 UT) 266, ¶15 9 P.3d 1073 . . . . . **16**

Medicare & Medicaid Guide P43, 957 Federal Recovery Services, Inc v. United States, ex rel, (1995, 5th Cir) ¶31 72 F.3d 447 . ***15, 16, 17, 35***

Miller, V. Celebration Mining Company, (Utah S Ct 2001).64; 29 p.3d 1231. . . . . **18, 19**

Murphy v Crosland, 915 2d 491, and 495 (Utah 1996).. . . . . **13, 14 16**

Nielsen v. Gold's Gym, (Utah Sup Ct 2003) 78 P. 3d 600 ¶11¶12. . . . . **17**

Okelberry v. West Daniels Land Association 2005 UT App 327, ¶14, 120 P.3d 34. . . . **13**

Orner v. Shalala, 30 F.3d 1307, 1310 (10th Cir. 1994).. . . . . **14, 16**

Orton v. Carter, 970 P.2d 1254 (Utah S Ct 1998). **11**

Parrish v. Hayworth, 138 N.C. 637, 641, 532 S.E. 2d 202, 640,641(N.C. App. 2000) 6 . . . **29**

Parrish v. Richards. (UT S. CT 1959) 336.2d, Page, 123 ¶ 2, ... **17**

Potter v. Chavadz, 1999 UT App 95, 977 P.2d 533 ¶13 ¶19. . . . . **29**

Ramsey Winch Inc. v. Henry, 555 F.3d 1199 III(A)(10th Cir. 2009) . . . **22, 23 31, 33**

Reedeker v. Salisbury, Utah 1998 952 P.2d 577, 582 . . . . . **12**

Sandy Valley Ass. v. Sky Ranch, (Nevada S Ct 2001) 117 Nev.948; 35 P.3d 964,968. . . . **29**

Sierra Club v. Sevier Power (Utah S Ct. 2006) 74. 148 P.3d 960,568 ¶ 11. . . . . **14, 38**

Smith v. Price Development Co. (Utah S Ct 2005) 87.125 P.3d 945,540). . **20, 23, 24, 33, 35, 40**

Springville Citizens v. Springville, (1999 S Ct UT) 25 P 30, 979 P. 2d ¶30. . . . . **21**

Stines v. Willyng, INC., 81 N.C. 98, 101, 344 S.E.2D 546, 548 (N.C. 1986). **29**

Utah Department of Transportation v. Ivers (Utah S Ct 2009) 56 218 p.3d 583 ¶25¶26. . . **30**

Utah Department of Social Services v. Vijil, (UT 1989) 784 P.2d 1130, 1133. . . . **14**

Weyeth Hardware & Manf. Co. v. James-Spencer-Batement. 15 Utah 110, 47 P. 604 (Utah 1897). . 16

OTHER STATUTES AND RULES

28 U.S.C. Section 1257(a) 2000. . . 1

Utah Rule of Civil Procedure 17(d). 11, 13, 16

Utah Rule of Civil Procedure. 17(b) (c) (d). . 16

Utah Bar Journal Aug. 8th 2006. . . 34

Utah Code Ann ¶ 10-9a-302. . . . 35, 37

Utah Code Ann ¶ 78-2a-3, (UCA¶ 78A-4-103(2) (i) 37

Utah Code Ann ¶10-9-1001(3) (a)-(b). . 21

Utah Corporate Act. ¶16-6a-707) (¶16-6-61). 18

Utah Code Ann. 10-9a-103(6). . . 23

Utah Code Ann ¶ 10-9a-606 . . . 4

Utah Code Ann ¶ 10-9a-505.... . 37

Penalty: UCA ¶ 10-9a-803(2).. . . 21

Utah Corporate Act ¶16-6a-1405. . . 12

Utah Corporate Act ¶16-6a-204.. . 12, 13, 14

Utah Code ann. ¶ 48-2a-1002. . . 12

Utah Code Ann. ¶ 42-2-10. . 12, 14, 16

Utah Code Ann. ¶ 42-2-5 . . . 12

Utah Code Ann. ¶ 57-8-6 . . . . 3, 8

Utah Code Ann. ¶ 57-8-7(2). . 4, 27, 30

Utah Code Ann. ¶ 57-8a-102(4). . 4, 9

SLCCO¶20.24.030 H. . . . 4, 21

Penalty: SLCCO ¶ 20.36.020 . . . 21

SLCCO ¶ 21A.28.020 . . . 3, 36

Penalty: SLCCO ¶21A.54.100. . 22

SLCCO ¶18.18.010. . . . . 21, 37

SLCCO ¶18.18.050 . . . . 21, 37

Penalty: SLCCO ¶ 18.20.040 . . . 36

Municipal ordinance ¶17.80.050 (L).. . 10, 36

OPINIONS AND ORDERS IN THE LOWER COURTS

(A) Utah Appellate Court opinion of Dec. 13th 2009

(B) Utah Appellate Court order denying Onyeabor's motion for Rehearing and Motion for supplemental dated, January 5th 2010.

(C) Opinion of Utah Supreme Court denying Onyeabor a Writ of Certiorari, June 11th 2010

(D) Salt Lake District Court's order granting summary judgment to Respondents, Jan. 28th 2008

(E) Salt Lake District Court order for substitution of parties was of September 15th 2005

JURISDICTION: The jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C ¶ 1257(a). Respondents filed a motion for summary judgment on October 30th 2006 at Salt Lake District Court. Ms Onyeabor appealed the ensuing judgment, which the Appellate Court affirmed December 13th 2009. Her petition to Utah Supreme Court for Writ of Certiorari (aka, "Writ") was denied June 11th 2010. She was granted an extension by Justice SotoMayor, until October 25 2010, to file petition for Writ of Certiorari. **GROUNDS:** Pursuant to Federal Rule of Civil Procedure, 10(b), review may be granted when there is a conflict between two Appellate State courts and/or a United States Appeals Court, on a federal question. Additionally, Rule 10(c) "a state court or a United States Court Of Appeals has decided an important question of Federal Law that has not been, but should be, settled by this Court, or decided an

important federal question in a way that conflicts with relevant decisions of this Court."

CONSTITUTIONAL STATUTORY PROVISIONS

(See full provisions at Appendix H)

*The Fifth Amendment of the United States Constitution

*The Fourteenth Amendment of the United States Constitution

*Article I section 22 of Utah constitution.

*Separation of Powers Provisions in Utah Constitution Article V, Section 1

*Separation of Powers Provisions in the United States Constitution: Article I, Section. 1: Article II, Section. 1: Article III, Section. 1

*Article VI, clause 2 of the United States Constitution- aka The "Supremacy Clause."

*Utah Code Ann. 10-9a-103(6)

STATEMENT OF THE CASE

Centennial Pointe Park is a commercial real estate, a Planned Unit Development, *See* Plat Map,[1] consisting of seven adjacent Lots, located in the M-1 zoning district of Salt Lake City.[2] In 1998, the developer, Mr. Sanborn (Centennial Pointe LLC), procured a **conditional use** permit,[3] because three lots had 15,000 sq. ft. instead of the required minimum of 20,000 sq. ft. Sanborn sold lot 1 to Onyeabor, April 24th 2000, lots 4, 5, 6 and 7 to Bezdijan, August 23rd 2000, lot 2 to Onyeabor Sept. 28th 2000, and lot 3 to LEBR November 24th 2000.

Onyeabor's Lots 1 and 2 lie adjacent to LEBR's Lot 3 (Appendix M (1)). Each party has independent entry from the street onto their property. Onyeabor's Lots measured 23,834 sq. ft. in Lot 1 and 15, 553 sq. ft. in Lot 2. She owned that area, "fee simple," (CC&R 4.1),[4] and "exclusively," (Utah Code Ann. ¶57-8-6).[5] This is in contrast to ownership over "common

---

[1] PUD Lots include building & surrounding Land on 'Lot," see Plat, Appendix M (1), M (2), M (3), M (4); Full version at Addendum II, Opening Brief, Exhibit 1.

[2] M-1 Zoning Minimum 20,000 sq ft Lots. SLCCO ¶ 21A.28.020, Appendix I (2).

[3] See Permit at Appendix K(3)

[4] See Original CC&R and Restated CC&R 4.1: "Estate of an owner. Each owner shall own **fee simple** to its Lot(s)"

[5] UCA ¶ 57-8-6, "Each unit [Lot] owner shall be entitled to **exclusive ownership** and possession of his unit."

areas," (Utah Code Ann.¶ 57-8a-102(4),[6] and ¶ 57-8-7(2)).[7] Having conveyed five of seven lots to Onyeabor and Bezdijan, Mr. Sanborn (and by admission, Bruce Raile[8] of LEBR), changed the CC&Rs, in 2000. LEBR had not purchased property at the time and changes were made without County permit, or adherence to regulatory municipal laws.[9]

Bruce Raile, admitted changing the CC&R, "for the interest of all the owners," although he hardly knew them. The reason LEBR wanted the changes is because LEBR did not have enough space on their own property for their 40 employees and their colossal storage trailers.[10] In addition, LEBR felt that because the other owners were minorities, ("Onyeabor" and "Bezdijan") they could easily be controlled or, perhaps, needed to be controlled.

---

[6] UCA. ¶ 57-8a-102 (4): "Common areas" means property the association(a) owns; (b) maintains (c) repairs; or (d) administers."

[7] UCA. ¶ 57-8-7 (2): "Each unit owner shall be entitled to an undivided interest in the common areas and facilities in percentages..."

[8] See Exhibit 24, ¶ 17 and ¶ 14 Onyeabor's Opening Brief, Addendum II.

[9] Utah Code 10-9a-608(b) and SLCCO ¶ 20-31-080 require public hearing before any changes to the subdivision or Plat. SLCCO ¶ 19.78.150(B) require permit for changes. See also, SLCCO ¶ 20-24-030. H and UCA 10-9a-606. require common areas shown on plat, penalty is Class C misdemeanor. See Appendix G # 19

[10] See Appendix P(#1-4) Preserved Appendix G # 11

Respondents relied on constructive notice to inform the other owners as Appellate opinion noted, page 4

> "Utah law recognizes [two] types of constructive notice. The first type is evidenced in the Utah Recording Statute, UCA ¶ 57-3-[102] (1)..."" (Read full definition, Appendix A)

Respondents also relied on "the disclaimer,"[11] which supposedly exempted Sanborn from adhering to Utah laws or consulting with the owners, as stated in the Appellate Opinion Page 2.

> "Centennial Pointe LLC exercised its right under the Original CC&R to unilaterally amend certain **portions of the Original CC&Rs..."** (Read Full definition, Appendix A)

"Original CC&R,"[12] refers to Covenants, Conditions and Restrictions recorded April 19th 2000, prior to Onyeabor's purchase of Lot 1. Lot 1 was purchased subject to Original CC&R; see "*hereafter made*"[13] provision. Onyeabor argued that Lot 1 should not be part of the dispute at all and Respondents agreed, see (Rec. 834-883 Page 29):

> "The Restated CC&Rs burden Ms Onyeabor's Lot 2 because the CC&Rs were recorded

---

[11] "The disclaimer": Original CC&R, (XIV¶ (b)) Appendix I (3).

[12] See all cited CC&R definitions at Appendix I (3). Full versions of both CC&Rs exist at Exhibits 2 and 3, Onyeabor's Opening Brief, Addendum II.

[13] *Hereafter made provision*-Original CC&R ¶ 4.1 Restated ¶ 4.9

> before Ms. Onyeabor purchased Lot 2, and Lot 1 is burdened by the April 2000 CC&Rs."

However, the Appellate Court applied Restated CC&R to Lot 1. See Onyeabor's "Writ" to the Utah Supreme Court Page 7. Reply Brief Page 4 Chapter II. Appellate conclusion is on page 3,

> "Even though Onyeabor purchased Lot 1 prior to the Restated CC&Rs becoming effective, Lot 1 was clearly subject to the covenants."

Restated CC&R was recorded August 24th 2000, prior to Onyeabor's purchase of Lot 2, and four months after purchasing Lot 1. The enforcement of the Restated CC&R is in contention in this case. The Restated CC&R purportedly converted 75% of Onyeabor's private property into community property, (common areas), without authorization from the County or existing owners.

Problems started in 2001 after LEBR moved in. LEBR began controlling private lots, allowing their 40 employees' vehicles and colossal trailers to blockade Onyeabor's businesses.[14] Onyeabor protested,[15] but LEBR asserted 75% of her lots were "community property."[16] Respondents made several documented claims to that effect. Here are a few:

---

[14] See Appendix P(#1-4) or Exhibit 15, Addendum II Opening Brief. See Onyeabor's affidavit Appendix O (¶3-25),

[15] See Onyeabor's affidavit Appendix O (¶21-24), (Rec.1478) Also, letters to LEBR addendum II, Opening Brief, Exhibit 16

[16] Affidavit of Alexander Udeh, Appendix N (¶5-15)

(a), "Parties need access over driveways **owned by the Association**."[17] However, Onyeabor owns her driveways. (b), "Onyeabor informed ...the Association that she would have vehicles towed that were parked in the **Centennial Point parking stalls** within her purported 'legal boundary.'"[18] But, the stalls are within Onyeabor's Lots-the association owns no property. Finally, Respondents asserted, (c), "it is true that you give up the flexibility that you would have **if you were the owner of your own separate parcel**." In fact, Onyeabor does own her separate parcels and only lost control due to LEBR's presence.

Onyeabor then asked LEBR to get off her property. This Court must realize that Respondents made the cited claims while physically occupying what they, eventually, admitted was Onyeabor's property.[19] Respondents changed their position strategically when bringing their amended complaint; their position now is that the property in question is privately owned by Onyeabor but, also, owned by the community. See, Appellate opinion, page 4 ¶ 2.

> "Contrary to Onyeabor's assertion, the amendments within the Restated CC&Rs did not constitute... transfer in fee simple to the Owners' Association or to Centennial Pointe LLC. Onyeabor still held the same title to her

---

[17] See Mr. Raile's letter to Onyeabor 6/11/2002-Exhibit 24 ¶14-¶17 Addendum II, Onyeabor's Reply Brief Pg 19 (2).

[18] Respondents' Reply Brief- Page 13 ¶ (44).

[19] See Appendix P(#1-4). or fully at Exhibit 15, Addendum II.

lots **as described on the recorded plat...**" (Read full citation, Appendix A).

Association I, used by LEBR's for its schemes, eventually dissolved 2001. The disputes escalated in 2002. Consequently, Onyeabor and Bezdijan,[20] (collectively holding 75% votes), passed verbal agreements, in a meeting with LEBR. They affirmed that Lot owner (not the Association); was sole controlling authority on areas depicted as Lots on the Plat. Lot owner would manage and maintain same, consistent with the Original CC&R,[21] and UCA ¶ 57-8-6. The agreement, honored by **all the owners**, lasted until onset of litigation after Bezdijan sold three Lots to LEBR and one to Snowcap in 2004. At no time did LEBR have required 67% votes. LEBR abided by the verbal agreement until the commencement of litigation in late 2004. LEBR arbitrarily reneged on the "2002 agreement" and, once again, permitted its 40 employees to blockade Onyeabor's businesses[22] forcing their closure in 2005.[23] That has cost Onyeabor untold financial loss. One of the employees of LEBR (Jennifer Clark), who was asked to stop blocking Onyeabor's entryways, assaulted Onyeabor **inside her offices** and Onyeabor became concerned for her safety and

---

[20] See affidavit, of Bezdijan, Appendix J(¶5-¶13). Original CC&R, XIV (67% needed).

[21] Original CC&R 5.2(a) "Each Owner and Occupant shall keep and maintain, or cause to be kept and maintained ... its Lot.

[22] See Affidavit of Mr. Bezdijan at Appendix J (¶5).
See affidavit of Travis Healey Appendix S(¶6)

[23] See Appendix P(#1-4) or addendum II Exhibit 15.

vacated the premises, renting one building out in 2006. She temporarily closed the main offices in the hopes of reopening after the lawsuit. Litigation has lasted six years. The local police found probable cause to document her "harassment complaint" # 04-170134.[24]

LEBR had resumed community maintenance, in a bid to assume full control on what they claimed were "common areas," and make Ms onyeabor stop asking his employees to leave. He, then, used the costs in a breach of contract claim against Onyeabor, as Association I. However, while the Restated CC&R said Association authority and maintenance were reserved for common areas, none existed. See Restated CC&R, ¶7.1. "Association shall be responsible for exclusive management and control of **common areas...** ¶6.2(L) "cause **common elements** to be maintained."

Onyeabor's property is private property, not common areas,[25] according to the Plat, Statutes and the County.[26] CC&R7.3 reserved, "The Association may acquire tangible and intangible property for common use." Any mention of common areas is in anticipation of that happening. Onyeabor informed LEBR, 2002, and again, in 2004,[27] that, damages or additions made to her property, would be their

---

[24] Also, Affidavit of Alexander Udeh, Appendix N(¶5-¶16)

[25] Compare UCA. ¶57-8-6 and. ¶ 57-8a-102(4).

[26] See Appendix K(1) K(2) ¶2¶5 K ((3)

[27] See both letters, Addendum II, Opening Brief. Exhibit 16

liability. LEBR later pursued the litigation on behalf of Association II, unregistered until November 29th 2004. The District Court ordered the substitution of Respondents, September 15th 2005. In late 2004, Onyeabor discovered that a Restated CC&R had been written in 2000,[28] which designated her Lots as 'common areas.' City Ordinance ¶ 19.78.150(B) and ¶ 17.80.050(L) provides,

> "Once the overall development plan has been approved by the county commission, no changes or alterations to such plan shall be made without first obtaining approval of the County."

See County testimony at Appendix K (2). It was not until Onyeabor brought her Motion to Dismiss (Appendix L (1)) for lack of Jurisdiction that LEBR characterized Onyeabor as a "freeloader," and claimed aggrievement. Respondents then filed a countermotion to substitute,[29] which was granted, without any foundation in law.[30] The Appellate opinion (Page 4) agreed, "LEBR is an aggrieved owner," but LEBR provided no documented evidence. Additionally, Mr. Raile's claims,[31] that Onyeabor suddenly ceased paying her bills in 2002 were unfounded. Onyeabor did not pay the bills on her so-called common areas, after 2004 because, according to the Plat, the permit and verbal agreement, there

---

[28] See Bob Mills at Appendix R ¶12-16

[29] Respondents' Motion to Substitute, Appendix L (3) Pg 3 ¶2

[30] District Court Order, Appendix D and Appellate opinion, Appendix A.

[31] Bruce Raile's affidavit, Rec. 2170-2173 ¶14.

were no common areas. The 2002 agreement, affirming the Plat, was removed from the Statute of Frauds due to part-performance, see generally, *Orton.*[32] The Appellate Court allowed LEBR's aggrievement claims to substitute for Association's maintenance claims. Two owners testified against LEBR, but the Court agreed with LEBR. All disputed facts, some undisputed,[33] even LEBR's contradictions, and baseless stereotypes, weighed heavily in favor of "movant" LEBR, reversing Utah law, which states, "[i]f there is any doubt... [t]he court must evaluate all the evidence ...in the light most favorable to the party opposing summary judgment." *Bowen v. Riverton City,* 656 P.2d 434 436. (UT 1982).

SUMMARY OF ARGUMENTS, ISSUE I

ISSUE I: A Court's Lack Of Jurisdiction Is An Issue Of Law, Not Of Discretion. Utah Law Prohibits The Use Of Substitution To Create Jurisdiction Where None Existed. Subjecting Ms Onyeabor To Such a Judgment Is a Violation Of Her Due Process Rights.

In Utah law, a court's lack of jurisdiction has never been cured by the substitution of corporate entities, which are strictly subject to corporate laws, and do not qualify as groups earmarked in Rule

[32] See Opening Brief Pages 45-50 citing Orton v. Carter, 970 P.2d 1254 (UT 1998).

[33] See Onyeabor's "Writ" to Utah Supreme Court. Page 7

17(D).[34] *See also,* Arndt,[35] ¶24, and UCA ¶ 42-2-10(1). Jurisdiction is a threshold, statutorily based issue that may not be trivialized.[36] When ignored, it reverts to a motion to dismiss, and compels resolution.[37] Pursuant to Utah laws, Respondents lacked standing and have failed to state a claim. The Appellate Court made two conclusions with regards to jurisdiction, neither one of which is founded in law. First, the Court concluded (Page 5 ¶1) that, "LEBR is an aggrieved owner." It further held, "the Owners' Association could bring suit to enforce payment of dues and other obligations under the Restated CC&R." Therefore, Association II has **standing** because the Restated CC&R says it has **duties**. See also, UCA ¶ 42-2-5, Utah Corporate Acts: ¶16-6a-1405, and ¶16-6a-204. The Court never stated why Association II (incorporated after onset of litigation) had standing. UCA ¶ 48-2a-1002 states:

> "In a derivative action, the plaintiff must be a partner at the time of bringing the action and: (1) must have been a partner at the time of the transaction of which he complains."

In Utah law, an Association, [a nonprofit corporation], "may not act in any manner not

---

[34] Rule 17(b) :) "When a minor defendant ..." also Rules 17(c)(3) 17(c)(4). Read full, Appendix I(1)

[35] *Arndt v. First Interstate* Bank, 1999 S Ct UT 91 991 P.2d 584 ¶24, ¶19

[36] Jones *v. Barlow*, 20, P12 UT 2007 ¶ 12.

[37] *Bateman v. City of West Bountiful* 89 F.3d 704 ¶6. (1996)

authorized in its articles of incorporation or bylaws," *Okelberry*.[38] Additionally, LEBR would have to initiate its own direct litigation against Onyeabor, if LEBR felt aggrieved, see *Arndt* ¶19, holding LEBR may only bring action against the Association on behalf of other owners. Additionally, LEBR is not an Association and substitution would dramatically change the roles of the contracting parties, "prejudicing" Onyeabor, *Graham* at p18 and p 31 and Utah Rule 23A (b). Unresolved questions are: LEBR's rights were not reserved by either order to be retroactive and so, Association-specific 'rights' of dissolved association I died with association I.[39] The substitution, and grant of attorney's fees to LEBR, negate the enabling statutes of nonprofit corporations, see UCA ¶ 16-6a-1405, and *Murphy*,[40]

> "We hold that officers and directors who continue the business of suspended corporation are **personally liable** for all debts and liabilities arising from those operations."

(c), Appellate opinion page 6, affirms "award of $70, 000" attorney's fees, favoring LEBR, who had posed as defunct Association I. However, Utah laws, UCA ¶16-6a-204 and Murphy, above, hold LEBR fully

---

[38] *Okelberry v. West Daniels Land Association* (2005 UT App) 327, ¶14, 120 P.3d 34. (citing *Reedeker v. Salisbury*, 952 P.2d 577, 582 (Utah 1998)

[39] Preserved: See Appendix G # 14

[40] *Murphy v Crosland*, 915 2d 491- 495 (Utah 1996).
See also, Appendix L (2) Chapters II and III.
Preserved: See Appendix G # 13

accountable. Unqualified entities are making claims based on nonconforming Restated CC&Rs. Therefore, failure to meet any conditions precedents precluded the award of attorney's fees.[41] *Department of Social Services*[42] held, "if jurisdiction is lacking, the judgment cannot stand without denying due process to the one against whom it runs." This is a violation of Onyeabor's Fourteenth Amendment due process rights. Again, when jurisdiction is lacking, "relief is not a discretionary matter; it is mandatory," *Orner v. Shalala.*[43] *In Sierra,*[44] *the* Court held that standing is "a judicial doctrine."

Respondents' pleadings[45] show they relied upon principles of equity in *Graham,*[46] not on law.[47] *Graham's* Rule 17(D), states, "partnership or other association, **not a corporation,** may sue or be sued by such common name." Additionally, UCA ¶ 42-2-10 (1) states, "Unregistered entities, **Shall not sue,** prosecute, or maintain any action, proceeding in any

---

[41] See Onyeabor's Opening Brief Chapters VI-VII Pages 39-43

[42] *Utah Department. of Soc. Serv. v. Vijil,* 784 P.2d 1130, 1133 (UT 1989)

[43] *Orner v. Shalala,* 30 F.3d 1307, 1310 (10th Cir. 1994)

[44] *In Sierra Club v. Servier Power,* 74 (UT S 2006) ¶13, 148 P.3d 960, 568

[45] See all pleadings Motion to substitute parties, Appendix L (1) (2) (3).

[46] *Graham v. Davis County Solid Waste Mgt Energy Recovery,* 136, 979 P.2d 368, 994 P.2d 1271 (1999 App UT) p16-p17).

[47] See Appendix L (2) Page 2 Chapter II ¶ A.

Courts of this state." Finally, Federal Rule 17(b) Civ. P. "Capacity to sue or be sued... shall be determined by the law under which it was organized.

REASONS FOR GRANTING REVIEW: ISSUE I

Unresolved issues, or ambiguous answers, especially those involving constitutional violations and court's jurisdiction, call for the Supreme Court review. "If no consideration has been given, or . . . any decision on the matter is ambiguous, it is unlikely ...that federal court cannot take jurisdiction." *Robinson v. Ariyoshi*, 753 F.2d 1468 ¶15 (9th Cir.1985). The Utah Appellate Court (Appendix A Page 5 ¶1) and the district court (Appendix D) never addressed jurisdiction based on any known legal principle. Subjecting Onyeabor to such judgment violates her Fifth and Fourteenth Amendment Due Process rights. When state law prohibits an action [Respondents' lack of jurisdiction], "there remains no cause of action to which ...jurisdiction could attach," Justice Ginsburg.[48] (Citation omitted).

In *Medicare & Medicaid Guide v. United States SA (*1995, 5th Cir) ¶31 72 F.3d 447, the Fifth Circuit concluded that, "Rule 15 does not permit a plaintiff amending its complaint to substitute a new plaintiff in order to cure the lack of subject matter jurisdiction." Respondents[49] mistakenly claimed relief under Graham thus:

---

[48] *Holster v. Gatco, Inc.*, ¶2 130 US 1575, 1576, (dissent).

[49] Appendix L(3) Page 2-3 Chapter I

> "Plaintiff has admitted that it was dissolved. Similar to the unincorporated Association in *Graham*, Plaintiff is attempting to cure the deficiency in its complaint... Defendant's [Onyeabor's] attempt to distinguish *Graham* based on type of business entity is **superficial**."

There is no similarity, as *Graham* court, p 12, 368 clearly noted, "In this case, the Committee, **as an unincorporated**... association falls within the purview of the "other association" of Rule 17(d)." Next, Association I was not in a state of "deficiency," it was dissolved,[50] and possessed no assumable rights. *Medicare,* ¶31.

In trying to limit this case to contract, Respondents hoped to bypass the jurisdictional issues, the property dispute, and violations of Onyeabor's constitutional rights. However, even within the confines of contract laws, the court failed to apply the law correctly. It partially interpreted[51] "the disclaimer," applying it **too broadly;** violating a fundamental Utah doctrine, "where particular enumeration is followed by general terms, the latter will be understood as limited in their scope as specified in the particular enumeration," *Parrish v. Richards,* Utah S Ct 1959 336.2d. Page 123 ¶ 2. See also, Taghipour *v. Jerez,* (Utah S Ct. 2002) 74, 52

---

[50] See Appendix L(1) Chapter I, II. The corporation dissolved. UCA ¶16-6a-1412(4).

[51] See *Lunceford v. Lunceford*, (2006 UT) 266, ¶15, 9 P.3d 1073 "A court must "attempt to harmonize all of the contract's provisions... and all of its terms."

P.3d 1252. ¶11 "provision more specific governs over the more general provision."[52] Original CC&R ¶ 4.3, ¶ 4.4, and ¶ 4.5 provided **specific** limitations on the "disclaimer."[53] That, and the required first mortgagees' written consent, before amendments, were overridden. See Original CC&R ¶13.3 and Onyeabor's Reply Brief Page 10. Additionally, the "*hereafter made*"[54] provision was selectively applied to the disfavor of Lot 1. See Onyeabor's "Writ" to Utah Supreme Court Page 7.

Therefore, the Utah Appellate Court opinion went against UCA ¶42-2-10(1), relied upon by the United States Court of Appeals in *Shalala*, 30 F.3d 1310 (10th Cir. 1994). The Appellate opinion is contrary to the Utah Supreme Court's rulings in *Arndt* (¶19&24), and *Murphy* (491-495) It is also contrary to the Tenth Circuit's ruling in *Medicare* 72 F.3d 447 ¶31. The court went against the Utah Supreme Court in *Taghipour* ¶11 (2002), and *Parrish v. Richards*, ¶2 by applying the **general principles** over the **specific**. In *Weyeth*,[55] court held, "A corporation has such powers only as are expressly granted by the state."

In *Nielsen v. Gold's Gym*, 78 P. 3d 600 (Utah 2003) ¶11¶12, Utah Supreme Court articulated Utah law on contract, holding that "mutual assent" and

---

[52] Appendix G #2

[53] "The disclaimer": Original CC&R, (XIV¶ (b)) Appendix I (3).

[54] Original CC&R ¶ 4.11. Restated ¶ 4.9. Appendix I (3).

[55] *Weyeth Hardware & Manf. Co. v. James-Spencer-Batement*. 15 Utah 110, 47 P. 604 (Utah 1897)

"meetings of the mind" are key to any contract. That cannot occur in absentia, via constructive notice. In *Amoco v. USA*, 10th Cir. 1980 ¶14, 619 F.2d 1383, the 10th Circuit held, "Constructive notice, **which creates a fiction** and deals with hypothetical facts, is a harsh doctrine which should be resorted to reluctantly." The Utah Corporate Act UCA ¶ 16-6a-707 prohibits constructive notice, demands "open meetings," to make amendments, see, generally, *Levanger*.[56] Next "contract" in Utah laws are, in turn, subject to United States constitution.[57] The Restated CC&R is nonconforming to regulations, therefore, unenforceable. *Hatch*.[58]

Accordingly, Ms Onyeabor poses ISSUE I, question 3, asserting that, since Respondents wanted to make the property dispute an issue of contract, she had annulled contract with Respondents,[59] upon LEBR posing as a defunct Association I, and she had the right to do so, relying upon *Miller v. Celebration Mining* 2001 S Ct UT 64; 29 P.3d 1231 ¶ 16. Appellate response, Page 5 was based on its "suspiciousness" of Onyeabor's motive "to opt out,"

---

[56] *Levanger v. Vincent*, 2000 UT App. 103, 3 P.3d 187.

[57] Article VI, Clause 2, of the US Constitution., *'conflict preemption'* see *Choate v. Home Builders.* 222 F.3d 788 13 (10th Cir. 2000).

[58] *Hatch v. Boulder Town Council*, Utah App.2001 ¶ 9, ¶16, 21 P.3d 245, 248: "Boulder Town Ordinance no. 39 was therefore enacted in violation of the enabling statute, and is invalid from its inception." ¶16

[59] See Onyeabor's Reply Brief, Page 17; "Writ" to Utah Supreme Court, Page 19.

not on law, stating, "Onyeabor has also failed to convince us that the Restated CC&Rs were voidable, as to her, so that she could unilaterally...opt out of the Owners' Association..." *Ockey* [60] at ¶ 19, cited by the Court, does support *Miller*. *Miller* is identical to this case, so, *Miller* ought to govern.

SUMMARY OF ARGUMENTS, ISSUE II

ISSUE II, Questions 1, 2 & 3: The Actions of the Utah Appellate Court Caused the Judicial Taking of Portions of Ms Onyeabor's Lots

The Utah Appellate Court redefined the Statute based meanings of "fee simple" rights, "common areas," "Lots," and the legally issued Plat Map by its various rulings. These actions caused the physical occupation of 75% of Onyeabor's property, a judicial taking, and a violation of her Fifth and Fourteenth Amendment rights. The dichotomy between the substantive and procedural elements is not easily discernable here, because, the unpredictable actions of the Utah Appellate Court mask it. However, not only is this a clear case of the judiciary legislating from the bench, it also meets the substantive "missing property" takings test. Respondents' and the Court's admitted that Onyeabor owns the property.

In *Smith*,[61] the Utah Supreme Court, while recognizing a violation of the separation of powers, also found that assignment of the Smiths' judgment

---

[60] *Ockey v.Lehmer, 2008 UT 37, ¶ 19, 189 P.3d 51.*

[61] *Smith v. Price Development Co.* (Utah 2005) 87.125 P.3d 945,540 ((Rep 5 (2005 UT) 87)

to the state constituted compensable constitutional taking. Justice Marshall held in *Loretto*[62] that permanent occupation of property which,

> "[e]ffectively destroys the owner's rights to possess, use, and dispose of the property... [the] property owner entertains a historically rooted expectation of compensation."

The minority opinion in *Loreto,* 419, US 443 -457, agrees with *Stop the Beach,*[63] and *Hughes,*[64] which require a "public interest test." In *Stop the Beach*, this Court concluded that "public interests," especially, those favoring "Stop the Beach" property owners, were enormous. Respondents here, fail the "public interest test" because there was no co-dependence between Onyeabor's Lots and theirs, or any public interest, until they created one. Respondents have strangulated the use of Onyeabor's property resulting in high economic deprivation to her.[65]

In *Stop the Beach*, Justice Scalia (at 24-29) contrasted between a taking, as measured by "loss of established property" test and Stewart's "unpredictability" test in *Hughes,* around which the

---

[62] *Loretto V. Teleprompter Manh. Catv.*, 458 U.S. 419, 420, 427 (1982),

[63] *Stop the Beach Renourishment, Inc, v. Florida Department* of Environ. Protection Et al 998 So. 2d 1102, (560 US, 2010)

[64] *Hughes* v. *Washington*, 389 U. S. 290, 296 (1967)

[65] See Affidavits of Bezdijan- Appendix J(¶5-23). See her son's (Alexander Udeh) testimony at Appendix N ¶3-18

Parties in *Stop the Beach* had largely framed their debate. Justice Scalia noted that the "unpredictability" test was "misguided," in the sense that it was not the sole test, the most important test, nor was constitutional taking reliant on whether or not there had been precedents. However, he never completely discounted unpredictability as an essential ingredient in a constitutional taking.

Onyeabor has documented violations of numerous Utah laws, all to enforce the Restated CC&R, ignored by the Court. Title 10-9a violations are a Class C Misdemeanor punishable under UCA ¶ 10-9a-803(2). Violations of Title 20 Municipal Ordinances:[66] are also Class C misdemeanors. (Appendix I(2). The Ordinances are presumed valid, unless contested. [67] See also, *Hatch* ¶ 16.

The Appellate Court committed a cardinal error[68] in property law, by authorizing a rezoning from the statutorily required 20,000 sq. ft. Lot, to 6000 sq. ft., "building only" (SLCCO ¶21A.54.100). The action of the Court has resulted in a judicial taking and is in direct violation of County issued permit,[69] legislative

---

[66] SLCCO 20.24.030.H, SLCCO ¶ 20.36.020. See also, SLCCO ¶20-31-080, ¶21A-54-150, SLCCO ¶18.18.010 and ¶18.18.050. Definitions, Appendix I(3)

[67] Springville Citizens v. Springville City, 1999 UT 25 P 30, 979 P. 2d 332¶30 "Municipal zoning authorities are bound by the terms of applicable zoning ordinances," Applying UCA ¶10-9-1001(3)

[68] SLCCO ¶18.20.040 (B). "All lots... Must conform to the minimum requirements of the zoning title."

[69] See Appendix K(3) and SLCCO 21A.54.100.

authority, and both Utah and United States Constitutions. The Utah Appellate Court's actions, permitting Respondents to violate these laws, and subsequent creation of new unknown laws, are germane to Onyeabor's claim that this substantive taking is the equivalent of a procedural one. If the legislature engages in such acts, it is characterized as "regulatory" or "procedural." Regardless, the focus of constitutional taking is not on the governmental **actor**, but on the **action** and its consequences.

Because the Respondents placed liens on Onyeabor's lots prior to getting judgment,[70] she was deprived of the ability to sell her property or use the equity. Because an agent of LEBR assaulted Onyeabor **inside her offices**, she was forced to vacate for her safety.[71] Those actions, as well as the blockade of Onyeabor's driveway and parking areas, and prolonged harassment of her person and her tenants[72] deprived her of the use of the lots. This case meets the deprivation standards in *Loretto* [458 U.S. 419, 420,427], *Lucas*[73] *at 26*, Ramsey at III

---

[70] See liens, Addendum II, Opening Brief, Exhibit 6. Onyeabor's affidavit at Appendix O (¶41) Liens are not allowed by the CC&Rs prior to judgment.

[71] See Court's order at Appendix E Page 9(L). See Affidavit of Onyeabor, Appendix O, (¶29).

[72] See affidavit of Mr. Walker, Appendix Q(¶2-¶18) and , see Onyeabor Affidavit at Appendix O (¶3-¶26)

[73] *Lucas v. South Carolina Coast.* (1992) 505 U.S. 1003.

(A)),[74] and *Smith* at¶ 12 stating, "a claimant must possess a protectable interest in property... taken or damaged for a public use." The Appellate Court admits property is Onyeabor's, and she has title.[75]

REASONS FOR GRANTING REVIEW: ISSUE II

The Utah Supreme Court, in *Smith*, (Page 5 footnote), asserted that Utah's jurisprudence on takings, Article I, section 22 of Utah constitution (also, UCA. ¶ 10-9a-103(6)), is comparable to the federal (Fifth and Fourteenth Amendments). Therefore, no conflicts exist that would preclude review. This case is multifaceted and presents an ensemble of factors, hitherto unexamined together, that the United States Supreme Court should review.

Firstly, it possesses that "fundamental" substantive, **missing, established, undisputed property,** test, which the Justices, in their separate opinions, held was lacking in *Stop the Beach.* Respondents, and the Utah Appellate Court, admit (Page 4), "Onyeabor still held the same title to her lots **as described on the recorded plat,** referenced in her deed."

Secondly, the Utah Appellate Court held that Onyeabor is bound by the Restated CC&R because she had constructive notice, see Appellate Opinion, Page 4. However, the Supreme Court in *Loretto,*

---

[74] *Ramsey Winch Inc. v. Henry*, 555 F.3d 1199, ¶III(A) (10th Cir. 2009)

[75] Appendix F

recognized Loretto was bound by the New York statute that allowed CATV cable on her property, based on a presumed constructive notice of existing laws, and still found a taking. The same principle was applied in *Smith,* in *Ramsey,* in *Lucas,* and would also apply here. For clarity, Respondents' reliance on constructive notice shows that there was no contract. Pursuant to the Fifth Amendment, "nor shall property be taken for public use without compensation." The acts of the Utah Judiciary denied Onyeabor her constitutional right to receive compensation for the deprivation of her property.

Thirdly, Justices Kennedy and Sotomayor, at *Stop the Beach* Pp 4-6, held that the Court should have anticipated that, if the property belonged to, (here Onyeabor), and was taken, due to the Court's actions, compensation is ultimately required. There was no "rational basis" or "compensation" here. When the Judiciary usurps legislative roles and legislates from the bench, that element of "unpredictability,"[76] invariably, joins the "missing established property"[77] test, of the Fifth and Fourteenth Amendment. Onyeabor's property has been unusable for ten years, and uncompensated, due to governmental actions.

A) Utah Appellate Court's Radical Redefinitions of Substantive Property Laws; a departure from the norm, caused the taking of Onyeabor's Lots

---

[76] See Justice Stewart: *Hughes* v. *Washington*, 389 U. S. 290 (1967)

[77] See Justice Scalia' *Stop the Beach Renourishment, Inc, v. Florida Department* of Environmenal Protection et al 998 So. 2d 1102, (560 US, 2010) at 24-29

The United States Supreme Court has concluded,

> "a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the state or under its direction for public use, without compensation... wanting in the due process of law required by the fourteenth amendment of the constitution of the United States, and the affirmance of such judgment by the highest court of the state is a denial by that state of a right secured to the owner by that instrument.

Chicago, Burlington & Quincy Railroad Co. v. City of Chicago, 166 U.S. 226, 241 (1897). The Supreme Court of North Carolina nullified a CC&R that burdened property, with no positive contributions to society or the owner, see *Armstrong v. Homeowners Assoc*, 360 NC 547; 633 S.E.2d 78 (NC 2006),

> "This Court will not permit the Association to use the Declaration's amendment provision as a vehicle for imposing new and different... covenants, thereby substituting new obligation for the original bargain of covenanting parties."

The Tenth Circuit in *Ramsey Winch v. Henry* (10th Cir, 2009), ¶ III (A), 555 F.3d 1199 agrees with *Armstrong*, holding that "onerous" restriction or "exaction" on property, depriving owner of the original bargain of determining who uses her property, "violates the Takings Clause and requires... government compensation." All Ms Onyeabor has done with this property since purchasing it, is fight to even own it. The Utah Appellate Court ordered a permanent invasion and occupation of 75% of her

property, and then redefined basic concepts of Utah property laws: such as common areas, fee simple ownership, Lot, and Plat, allowing Respondents to benefit from their unconstitutional actions.

This case contains that peculiar mix of ingredients of "land-use exaction" that United States Court Of Appeals found in *Ramsey*. It contains the overwhelming "economic deprivation," the Supreme Court found in *Lucas* ¶18, holding,

> "Where permanent physical occupation of land is concerned, we have refused to allow the government to decree it anew (without compensation), no matter how weighty the asserted "public interests" involved."

This case also contains the permanent intrusive occupation which the United States Supreme Court found in *Loretto*, and the "established ownership" - those substantive standards not proven in *Stop the Beach*. Governmental actions, whether by the Legislature, the Judiciary, or, as in this case; the Judiciary acting as the Legislature, has established "deprivation of property without due process," required by Justices Kennedy and Sotomayor in *Stop the Beach*, at 4-6. They state, at 3, "The Due Process Clause, in both its substantive and procedural aspects, is a central limitation upon the exercise of judicial power."

Unpredictable judicial conduct, here, inevitably, blurs the dichotomy between substantive and procedural taking; it is the same actor. Finally,

easements on Centennial Park "run with the land,"[78] so would these proposed common areas, remain in perpetuity. So, even if Onyeabor were to pay the $125,000 total judgment, Respondents still get to control her **private** property, and do more economic damage.

Additionally, ambiguity calls for review by the United States Supreme Court, see *Robinson*. ¶15. 753 F.2d 1468. The Utah Appellate Court did not provide legal basis for much of its findings. Its answer to the central question of whether or not common areas exist on Onyeabor's Lots ended in the following contradiction:

> ¶¶2 "The Restated CC&Rs ...wherein lots were originally defined based on the plat, which **did not** show common areas as being part of the lots" ¶¶ 2, Footnote: "Original CC&Rs indicated that parking stalls are shown **on the Plat** as Common Areas..." (Read Full citation, Appendix A Page 3).

The Court finds that the Plat Map **does not** show common areas on Onyeabor's lot and also finds that the same **Plat does** show common areas on her lots. Respondents have no permission to do anything on her property, except "ingress and egress over," reserved solely on lot 2. See titles, Appendix F. The Court's clumsy opinion depicts how hard it was to fit the reluctant Plat into LEBR's schemes. Original CC&Rs ¶1.5 (a) defines; "Common areas are the property and interest therein, **excluding the lots**." They are mutually exclusive. The Court acquiesced to the LEBR's unconventional and ambiguous schemes. Ambiguities clearly exist in the CC&Rs as

---

[78] See Both CC&R XVIII 18.2. Appendix I(3).

Onyeabor extensively argued[79] and, evidenced by the court's contradictory conclusions. The Appellate Court never rectified the ambiguity. The Opinion (Page 4), also denied Onyeabor's quiet title request, **because the Restated CC&Rs were valid**. If Onyeabor owns the property "as shown on the Plat," she must be able to quiet title.[80] The totality of the Appellate Court's actions redefined Utah property laws, extinguished Onyeabor's fee simple, and converted 75% of her property into community property. The 25% left, 'building only,' is unusable because its entrances, located on the occupied 75%, are being rigidly controlled against her, by Respondents, right up to her doors.

Justice Scalia in *Stevens et Al V. City of Cannon Beach*, 510 U.S. 1207, 1207 ¶9 (US 1994) stated:
"But, just as a State may not deny rights protected under the Federal Constitution through pretextual procedural rulings, neither may it do so by invoking nonexistent rules of state substantive law."
Here, the Utah Appellate Court provided neither the procedural precedents nor any substantive law to justify much of its actions.

(1) Appellate Court redefined fee simple, Lot and Plat

In Utah law, a "Lot" is an integral **inseparable** unit, see both CC&R at ¶4.3,[81] and UCA¶ 57-8-4. Contrary to Appellate Opinion, Page 5, the stranger

---

[79] See full preservation at Appendix G # 14

[80] See preservation Appendix G # 18

[81] Both CC&R¶ 4.3 "no part of a lot. may be separated." .Appendix I(3)

to the deed doctrine is applicable because the association cannot claim authority or easements "that run with the Land," that "touch and concern the land" (CC&R XVIII 18.2), because it owns neither land nor title in the subdivision, Flying *Diamond.* [82] See UCA ¶16-6a-611. See Issue #5 at Opening Brief, Chapter V, Pages 34-39

The standard instrument (the Plat) used in virtually all jurisdictions, to determine "Lots" and "common areas" was ignored or redefined, see, *generally, Sandy Valley.*[83] See *Stines,*[84] "A plat, referred to in a deed, becomes part of the deed, as if written therein." See also, *Parrish,*[85] "we note that the width of the original right of way is not indicated on this Plat ... it is patently ambiguous and void." Onyeabor's titles (Appendix F), state her purchase of the Lots was, "according to the Plat thereof," so LEBR and its lately created Association has no rights over her Lots, based on either CC&R.[86] In 1998, Sanborn dedicated the Plat, under oath, as his intent (Appendix M (3)) and defined lot as 'fee

---

[82] Flying *Diamond v. Newton Sheep,* 776 P.2d 618, 622-23 (UT 1989) *Potter v. Chavadz,* 1999 UT App 95, 977 P.2d 533 ¶13 ¶19

[83] *Sandy Valley Ass. v. Sky Ranch,* (Nevada S Ct 2001)117 948; 35 P.3d 964,968

[84] *Stines v. Willyng,* 81(N.C. 1986) 98, 101, 344 S.E.2d 546, 548

[85] *Parrish v. Hayworth,* 38 N.C. 637, 641, 532 S.E. 2d 202,205 (N.C 2000), (citing Allen v. Duvall).

[86] See Onyeabor's Opening Brief Page 45-54 chapter VIII-X.

simple." He changed his story in another oath,[87] after meeting LEBR.

The Original CC&R ¶ 3.1 defines Lot" as follows: "The Plat shows each Lot, its Lot number, location, size and dimensions." See also Appendix K (1) K (2). The Appellate Court, Page 4, held that Onyeabor's lots, **are depicted on Plat,** but also "equally divided," among the community, (UCA ¶57-8-7(2)). This is eerily similar to another case,[88] which the Utah Supreme Court condemned: "Allowing amendment subsequent to the entry of order of condemnation creates a fiction that private property taken has not been taken." Respondents' concession that Onyeabor's now owns her Lots, **as depicted on the Plat**, is a "fiction," see Restated CC&R ¶ 1.6,[89] and, also, "**exclusive control and management**," in Restated CC&R ¶ 7.1, reserved for Association on her property,[90] not to mention Respondents' documented history of claiming ownership over Onyeabor's property. Controlling property is inherent in 'fee simple' ownership.

(2) Appellate Court redefined "common areas."

There is no provision in Utah law for two concurrent, competing, "quasi-ownerships" on the same property. Once Onyeabor's property or portions

---

[87] Sanborn's Affidavit, Addendum II, Opening Brief, Exhibit 20

[88] *Utah Department of Social Services v. Vijil,* (UT 1989) 784 P.2d 1130, 1133

[89] Restated CC&R ¶ 1.6 Lot is "building only." Appendix I (3)

[90] Respondents could enforce the provisions again in the future.

thereof, are labeled "common areas," the priority of rights belongs to the Association and Onyeabor's 'fee simple' is extinguished. Onyeabor has established that ownership on common areas 'runs with the land,' in perpetuity, therefore, it is not an ephemeral, or maintenance issue, as the court suggests.[91] Common areas ownership usually complements, rather than compete against "fee simple."

(B) Actions of Utah Appellate Court Caused the Procedural and Substantive Taking of Onyeabor's Property.

Pursuant to the Fifth Amendment and, specifically, the Fourteenth Amendment due process provisions, no State shall "deprive any person of life, liberty, or property, without due process of law." Enforcement of the Restated CC&R on Onyeabor's Lots, by Respondents, constitutes private regulation, but the Appellate Court allowing it, brings the regulation up to the level of governmental action. The Restated CC&R simply became the law, without being subjected to County regulations. All doubts regarding its creation were resolved for **moving** Respondents. The Appellate Court referenced the CC&R to answer an issue of law (see jurisdiction). The *Hatch* Court held that an instrument must meet legal requirements to be enforceable. The Restated CC&R did not.

Onyeabor has established that 'common areas' is a competing **ownership type,** sitting on her property, similar to the hypothetical "private" truck containing a forbidden gun, sitting on business owner's property in *Ramsey*. Pursuant to *Ramsey* at

---

[91] Appellate opinion Page 4 ¶ 1

¶ III (A), Onyeabor is subjected to a total invasion of her property, and "**regulated out of**" her Fifth and Fourteenth Amendment due process rights to decide who uses her property. The Utah Appellate Court redefined Utah property laws, and, consequently, the Restated CC&R, not the Legislature or County, was the instrument which rezoned Centennial Pointe, a travesty of Utah law.

While the Courts allowed Onyeabor to press assault and nuisances charges, the crux of this matter concerns the transfer of private property to the community. See original Order at Appendix E page 9¶L. The assaults and nuisances occurred because Utah Judiciary authorized Respondents to control Onyeabor's private property. Onyeabor recognizes judicial power may invalidate unconstitutional legislative action/laws, but the Court never asserted Utah municipal laws were unconstitutional or unreasonable, nor did the court establish any "pretextual" or "background laws" that allowed the taking.

On the issue of whether or not one could call this a governmental taking if the government is not overtly the immediate recipient. "We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects." Justice Stevens, for the majority, in *Kelo et al v. City of New London*, IV ¶25 (545 U.S. 469 (2005), affirming that Private to private transfer is compensable as long as it contributes economically to the community. Justice Thomas (dissenting) called it a "dangerous" and "boundless" expansion of governmental power. LEBR is a corporation with 40 employees; however,

Appellate court never claimed that fact as "rational basis" for the taking.

Lots 1 and 2, by Court's admission, belonged to Onyeabor 'fee simple,' **as described on the recorded plat,** but, is presently owned by the community, and used by the community, **on their terms**. Additionally, the mixture of private–private, and private-public transfer, as in this case, was applied by the United States Supreme Court in *Loretto, Lucas and Ramsey,* ¶III (A).

The precedents concern the same and applicable principles as here. In sum, The Appellate opinion went against the United States Supreme Court in *Loretto, Chicago, and Lucas,* the 10th Circuit Court in *Ramsey,* the Utah Supreme Court in *Smith*, and the North Carolina Supreme Court in *Armstrong*. This case also satisfies that critical **established missing property** test, lacking in *Stop the Beach*.

In conclusion, the United States Supreme Court in *Lucas* held there is no state interest, "weighty" enough to justify assault on fundamental guarantees of the constitution. The United States Supreme Court must stop the erosion of our constitutional due process rights and the use of CC&Rs as magic wands of real property laws. A greedy minority would use those "wands" to take over their neighbor's front porches, front yards or choice trees. This case begs for review by United States Supreme Court.

SUMMARY OF ARGUMENTS, ISSUE III

ISSUE III, Questions 1 and 2: the Utah Appellate Court Redefined Utah Property Laws, Usurped Legislative Prerogatives

Breaching the Separation of Powers clause.

The concept of separation of powers is as old as democracy itself. From its inception in the wayward hills of Athens to the clan systems in Asia and Africa, mankind has always recognized that need to subdue the inherent human propensity towards tyranny, by allocating power. As the concept was sharpened by the French Republic, then crystallized into English law and, subsequently, American law, the separation of powers presently forms a pillar of stability in a democracy. America stands alone as the forebear of democracy and such principles.

In her *Law Day* speech, May 1, 2006, (*Utah Bar Journal* Aug. 8th 2006), Judge Carolyn McHugh of the Utah Appellate Court likened separation of powers to three cards placed in a perpetual balancing act. "If...we tamper with this amazing gift from our forefathers ... we risk losing what makes us unique and ... the greatest system of government ever."

In *Taghipour*,[92] ¶23, Judge Orme (concurring), "It is not the prerogative of the courts to rewrite legislation ... repairs must come via legislative amendment rather than judicial pronouncement." Nonetheless, the Appellate Court violated those lofty principles, by meddling in an area of authority reserved for the legislature: land use Statutes and Ordinances. See, Appendix K (1) (2) (3).

---

[92] *Taghipour v. Jerez*, 2001 UT App 139, 12, 26 P.3d 885.¶ 23

In *Smith*[93] ¶14, the Court found a taking, adding, "[i]t is not within the power of a legislature to take away rights once vested by a judgment." (Citations omitted). The order converting Onyeabor's property into common areas resulted in a violation of the separation of powers. The selective applications and invalidation of laws, by Utah Appellate Court is not only a breach of separation of powers but, acts as a regulatory taking, just as it would, if the Court had overtly installed offensive statutes.

Original CC&R ¶ 4.3, ¶ 4.4, and ¶ 4.5 provided **specific** instructions and limitations on the "disclaimer,"[94] and the Court's failure to use those standards[95] permitted Respondents to arbitrarily rezone the subdivision, change property boundaries, use of Lots, and create **community ownership** where none existed. See ordinances ¶19.78.150 (B), SLCCO ¶18.20.040, and ¶17.80.050 (L) and SLCCO 21A.28.020. The Court thus vested authority where none existed in Respondents (*Medicare* ¶31),; actions prohibited by Utah law and the separation of power clauses of Utah and United States constitution.

REASONS FOR GRANTING REVIEW: ISSUE III

Pursuant to Article I, Section 1, Article II, Section 2 and Article III, Section 3, the United States Constitution reserved Legislative authority in

---

[93] *Smith v. Price Development Co.* Utah 2005 87, 125 P.3d 945, 540 Pg 5, ¶14.

[94] "The disclaimer": Original CC&R, (XIV¶ (b)) Appendix I (3).

[95] See also Appellate opinion, page 2

Congress, Executive in the President and Judicial in the Supreme Court. Under Utah law, Article V section 1 of the Utah constitution provides for separation of powers within the state, therefore, no conflicts exist that would preclude a review. Pursuant to Article VI clause 2, [96] the United States Constitution would preempt state law on constitutional issues, and jurisdictional preservation of the system. The Legislature, **acts, speaks** and **exists** through the County, municipal ordinances and the Plat on land use matters. These documents, collectively, show that no common areas exist on Onyeabor's property; therefore, Respondents have no rights to park, maintain or harass Onyeabor there.

(A) Utah Law specifically reserved decisions on land use matters for the Legislature and the County.

When the Utah Judiciary interposes itself in land use matters, (a clear legislative prerogative), the consequence is indistinguishable from a forced abdication of the legislature. The appellate actions invalidated the Enabling Statutes (Utah Code ann. ¶17-27a-101 and UCA ¶ 10-9a-101) Act that reserved authority over land use to the Legislature, under UCA ¶ 10-9a-505. The court snubbed[97] the County Planning commission, whose authority was established under UCA ¶10-9a-302 to oversee the platting of the municipality and enforcement of its

---

[96] Article VI, clause 2, "supremacy clause" [96] of US Constitution. See *Choate* ¶13.

[97] By ignoring its direct testimonies Appendix K(1), K(2) ¶2 ¶5 and K(3)

land use Ordinances.[98] Its duties are enumerated at UCA.10-9a-602 (1). The Utah Appellate Court overstepped their authority when they issued confusing and contradictory orders which ignored or even contravened these laws. Subdivision amendments, and ownership changes, and rezoning should not be accomplished via court orders.[99]

Additionally, Utah Code Ann. ¶ 78A-4-103(2) [100] (formerly 78-2a-3) specifically does not allow the Utah Court of Appeals power to make decisions that challenge the legislature on land use, except in adjudicative matters. See *Bradley*,[101] where Utah Supreme Court articulated this law. Onyeabor argued that the current ruling went against the edicts of the legislature on land use, therefore, UCA ¶ 78A-4-103(2) (i) was applicable.

(B) A Breach of the Separation of Powers Reverberates Throughout Our System

Violation of the separation of powers clauses has a reverberating effect on judicial proceedings. The Utah Supreme Court in *Sierra*[102] states, "[t]hrough

---

[98] See SLCCO ¶18.18.010 and SLCCO ¶18.18.050.

[99] See Appendix G #15

[100] See Onyeabor's "Writ" to Utah Supreme Court, Pages 11-12 See also Appendix G # 16

[101] *Bradley v. Payson City Corp* (2003 S UT) ¶33 ¶37,70 P.3d. 47

[102] *Sierra Club v. Sevier Power* UT 2006 ¶11.*74*, 148 p.3d 960, 568.

our case law, we have developed the requirement that a party have standing in order to confine the courts to a role consistent with the separation of powers." A combination of *Smith* (Pg 5 ¶14), and the measures in *Sierra*, establishes that violations of the separation of powers run parallel with other constitutional violations. Legislative positions, shown by direct testimonies from Salt Lake County, the Plat and Ordinances **consistently** show that Onyeabor's lots are fee simple, unlike the Appellate **inconsistencies**.[103] In *Judd*,[104] Justice Wilkins stated: "[t]he power to declare what the law shall be is legislative. The power to declare what is the law is judicial." (Citations omitted).

(C) United States Supreme Court Precedents preclude Respondents' claims.

The United States Supreme Court has consistently rejected usurpation of power whether by the judicial, executive, or legislative branches. In *United States v. Curtiss-Wright Export* 299 U.S. 304, 319 (1936) , the court assigned extraordinary powers to the presidency, explaining it entailed power of the President over foreign entities rather than within the United States, so had a national security justification for the restriction.

In *Morrison v. Olson*, 487 U.S. 654, 697 (1988), a split court, concluded; "The Act's provision restricting Attorney General's power ...does not **impermissibly** interfere with the President's exercise of his constitutionally appointed functions." Justice Scalia (p.697 dissenting) held that each branch must

---

[103] See Appendix K (1) (2) (3) and the Plat Map.

[104] *Judd v. Gregory Drezga*, 2004 UT 91, ¶ 37, 103 P.3d 135

strictly administer within its constitutionally established jurisdiction, concluding, "The Framers of the Federal Constitution... viewed the separation of powers as the guarantee of a just Government."

In *United States v. Perkins*, 116 U. S.483, 485 (1886), the court's applied similar guarded restriction, while invoking the infinite power of congress for "public interest." Recently, in *Free Enterprise*,[105] Justice Robert, p28 concluded: "The Board's existence does not violate the separation of powers, but the substantive removal restrictions imposed by ¶¶ 7211 (e) (6) and 7217(d) (3) do."

There are two common denominators in above precedents. Firstly, there is the existence of "legislative Acts," a clear "rational basis" or some "national security interest," justifying either the restrictions or the breach. Secondly, Courts pay great attention to this important principle. The Utah Appellate Court's breach was flagrant and unapologetic, without "rational basis."

The Utah Appellate Court conveniently shuttled between the roles of the judiciary and those of the legislature. However, see *Judd* at ¶37. The Court had, also, drawn authority from the nonconforming Restated CC&R, thereby, turning this property dispute into a purported contract. The Appellate Court's decision went against the Utah Supreme Court in *Bradley* and *Smith*, went against the United States Supreme Court in *Free Enterprise Fund*. Then the Court went against its own principles in *Hatch*, ¶16, *and Taghipour (2001)* ¶23, *by* enforcing a

---

[105] *Free Enterprise Fund V. Public Company Accting.* US 2010 Pp 27-29. 537 F. 3d 667

nonconforming, **broader**, application of the Restated CC&R. The court basically vitiated the enabling statutes, which established that the Legislature, Salt Lake County and the Planning commission are the authorities on land use matters. These actions add up to violations of Onyeabor's fundamental rights to due process, pursuant to the Fifth and Fourteenth Amendments of the United States Constitution.

In conclusion, this court in *Ex Parte Young* 209 U.S. 123 at 159-160 (1908), established a time-honored doctrine that once a state agency (Utah Judiciary) offends the basic principles of the United States constitution, it concedes every right to invoke state sovereignty. Additionally, neither Respondents nor the Appellate Court may make the allegation that Onyeabor did not brief her issues. All issues raised, were addressed by the Utah Appellate Court and cited, thus mooting such allegations. Onyeabor intends to word her issues differently than she did in the lower court and this court permits that, *Yee.*[106]

In conclusion, Ms Onyeabor is convinced that the United States Supreme Court, who knows neither pauper nor princes, has the sole capacity, through judicial review, to remedy this **pervasive** and **systemic** problem in America, which involves the abrogation of innocent Citizens' property rights and constitutional guarantees. This and her belief that severe injustice has been done to her, warranted her swimming, alone, against the tide of a one percent

---

[106] *Yee V. City Of Escondido*, 1992 ¶III(B) 503 U.S. 519,535-36 "A litigant seeking review in this Court of a claim properly raised in the lower courts thus generally possesses the ability to frame the question to be decided in any way he chooses.."

probability of being heard. This case merits a review by the Supreme Court of the United States.

Based on the foregoing, the actions of the Utah Appellate Court are prohibited by the United States Constitution. The Petition for Writ of Certiorari should be granted and the judgment summarily dismissed. Respectfully Yours,

DATED AND EXECUTED this 22nd day of October 2010

Myriam N. Onyeabor, pro se
P. O. Box 22244
Salt Lake city Utah 84122
801-487-9006

INDEX TO APPENDICES

Appendix A: Utah Appellate Court Opinion Was Dated December 13th 2009

Appendix B: Utah Appellate Court's Opinion denying Ms Onyeabor's motion for Rehearing and Motion to supplement evidence was dated January 05, 2010.

Appendix C: Opinion of the Utah Supreme Court Denying Onyeabor's Petition for A Writ of Certiorari Was Dated June 11th 2010

Appendix D: Salt Lake District Court Order for Substitution of Parties of September 15th 2005.

Appendix E: Salt Lake District Court's Order Granting Summary Judgment to Respondents Was Corrected and Dated January 28th 2008

Appendix F: Ms Onyeabor's Titles to Lots 1 and 2

Appendix G: Preservation of Issues

Appendix H: Constitutional & Statutory Provisions

Appendix I: DEFINITIONS of Rules, Codes, Ordinances and CC&R.

I (1) Rules

I (2) Codes and Ordinances

I (3) Covenants (CC&Rs)

Appendix J: Affidavit of Mr. Bezdijan

Appendix K: Salt Lake County Testimonies

K (1) Testimony by Mr. Wheelwright, Planning Commission Director
K (2) Testimony by the Salt Lake County.
K (3) the subdivision Permit

Appendix L (1): Onyeabor's Motion to Dismiss

Appendix L (2): Ms Onyeabor's Reply to Motion to substitute Parties.

Appendix L (3): Respondents Answer and motion to substitute parties

Appendix M: THE PLAT MAP-
M (1) Focus on Building one
M (2) Reduced Image showing Outline
M (3) Dedications (right of Plat)
M (4) Public easements (left of Plat)

Appendix N: Affidavit of Alexander Udeh.
Appendix O: Affidavit of Myriam Onyeabor
Appendix P#1, P#2, P#3, P#4: Blockade of front doors, trailers, signs on Onyeabor's buildings.

Appendix Q: Affidavit of James Walker

Appendix R: affidavit of Mr. Robert Mills

Appendix S: Affidavit of Mr. Travis Healey

APPENDIX A

IN THE UTAH COURT OF APPEALS

Centennial Pointe Owner's Association; LEBR Associates, LLC,	)	MEMORANDUM DECISION Not For Official Publication Case N0. 20070851
Plaintiffs, Appellees and Cross-Appellants.	)	FILED November 13, 2009 2009 UT App.325
v.	)	
Myriam Onyeabor	)	
Defendant, Appellant	)	
And cross-Appellee	)	

Third District, Salt Lake Department, 040918762.
The Honorable Robert P. Faust

Myriam Onyeabor, Salt Lake City, Appellant, and Cross-appellee, Pro se.
Jeffrey L. Silvestrini/ Edward T. Vasquez and George Hunt For Appellees and cross-Appellant

Before Judge Bench, Orme and Davis
ORME, Judge

The trial court properly determined that the "Restated Declarations, Conditions and Restrictions" (the Restated CC&Rs) were valid and encumbered both Lots 1 and 2. Which are owned by Myriam

Onyeabor.[107] The original " Declarations, Conditions and Restrictions" (Original CC&R) provided with our emphasis as follows:

> Except as provided below, the vote of Owners holding at least 67% of the Percentage Interests shall be required to amend this Declaration or the Plat. . The foregoing right of amendment shall, however, be subject to the following:

(b) Until the Declarant[, Centennial Pointe LLC,] has sold all Lots, Declarant shall have the right unilaterally to amend and supplement this Declaration and the Plat to correct any technical errors or to clarify any provision to more fully express the intent of the Declarant for development and management of the Project.
Centennial Pointe LLC exercised its right under the Original CC&Rs to unilaterally amend certain portions of the Original CC&Rs that created an overlap in the description of the common areas and lots, and recorded the Restated CC&Rs containing such amendments. We conclude that the trial court properly determined that Centennial Pointe was within its rights to unilaterally

---

[107] 1A recurrent theme in Onyeabor's brief is that the trial court erred in making its various rulings, given her pro se status. While both trial and appellate courts tend to be more lenient with some procedural failures of a pro se litigant, pro se status does not excuse a failure to comply with evidentiary requirements before the trial court or a failure to provide meaningful legal analysis in an opening brief on appeal. See Lundahl v. Quinn, 2003 UT 11, ¶¶ 3-4, 67 P.3d 1000 (per curiam).We do not address unbriefed issues that are identified in

continued...)

amend the Original CC&Rs, based on the prescribed amendment procedure contained therein, when the amendments essentially clarified the scope of the common areas and the amendments were made prior to the sale of all the lots. Both the Original CC&Rs and the Restated CC&Rs defined common areas as including parking spaces.[108] As pointed out by Appellees, the Restated CC&Rs merely eliminated ambiguities created by the overlapping definitions of lots, buildings, and common areas in the Original CC&Rs, wherein lots were originally defined based on reference to the plat, which did not show common areas as being part of lots.

Furthermore, even though Onyeabor purchased lot 1 prior to the Restated CC&Rs becoming effective, lot 1 was clearly subject to the covenants, conditions, and restrictions set forth in the Original CC&Rs, including Centennial Pointe's right to unilaterally amend the Original CC&Rs to correct any technical errors or clarify any ambiguous provisions. Her special warranty deed stated her title was "SUBJECT TO current general taxes,

---

[108] Section 12.8 of the Original CC&Rs also indicated that "parking stalls are shown on the Plat as Common Area and the [Owners'] Association shall be responsible for the maintenance and repair thereof, and the cost of such management, operation, maintenance and repair by the [Owners'] Association shall be borne as provided herein." And section 4.7 provided:

> Each Owner shall have the right, which right shall be appurtenant to and pass with the title to such Lot, to ingress and egress over, upon and across the Common Areas as reasonably necessary for access to such Owner's Lot, and to park, and have its invitees and licensees park, in such parking stalls as exist on the Property from time to time[.]

These sections further evidence the intent of the Original CC&Rs that parking areas would be common areas for the use and benefit of all owners of lots within the complex.

easements, restrictions and rights of way of record." In light of the amendment procedure in the Original CC&Rs, which was correctly followed by Centennial Pointe, the Restated CC&Rs are applicable to lot 1. And given that Onyeabor purchased lot 2 after the Restated CC&Rs were recorded, lot 2 is also clearly subject to the Restated CC&Rs because that warranty deed,[109] although referencing the Original CC&Rs, also expressly provided that her title to lot 2 was subject to restrictions of record.

Contrary to Onyeabor's assertion, the amendments within the Restated CC&Rs did not constitute any sort of transfer in fee simple to the Owners' Association or to Centennial Pointe LLC. Onyeabor still held the same title to her lots as described on the recorded plat, which was referenced in her deeds. The scope of the easements over the common areas within the complex were simply clarified and corrected. As such, the trial court's determination that Onyeabor was required to pay the dues set forth in the Restated CC&Rs for maintenance of the common areas is affirmed. Its dismissal of Onyeabor's counterclaims for quiet title and declaratory judgment, which claims were based on the assertion that the Restated CC&R's were invalid is, therefore, likewise affirmed.

---

[109] Onyeabor claims that because her deeds were warranty and special warranty deeds, they could not be subject to any encumbrances. However, Utah law clearly provides that such deeds may contain exceptions and that such exceptions may be stated following a deed's description of the land. See Utah Code Ann. §§ 57-1-12(3), -12.5(3) (Supp. 2009) Onyeabor's deeds clearly had such exceptions that indicated her lots were subject to restrictions of record.

Continued...

Onyeabor's claim that she lacked notice of the Restated CC&Rs is without legal merit. Onyeabor had constructive notice based on her deeds' general references to restrictions of record. See Utah Code Ann. § 57-3-102(1) (2000); First Am. Title Ins. Co. v. J.B. Ranch, Inc., 966 P.2d 834, 837 (Utah 1998) ("Utah law recognizes [two] types of constructive notice. The first type is evidenced in the Utah Recording Statute, Utah Code Ann. § 57-3-[102](1), which provides that documents and instruments filed with the county recorder pursuant to this statute 'impart notice to all persons of their contents.'"). Further, the trial court found that her title report for lot 2 specifically referenced the Restated rather than the Original CC&Rs, which should have called her attention to the fact that two versions of the CC&Rs existed.

We also affirm the trial court's rulings on Onyeabor's claims of trespass and intentional infliction of emotional distress. The trial court correctly concluded that theundisputed facts did not show such egregious conduct as to support the intentional infliction of emotional distress claim, see generally Oman v. Davis Sch. Dist., 2008 UT 70, ¶ 51, 194 P.3d 956 (outlining the requirements of intentional infliction of emotional distress), and did not show any trespass because the common areas could by accessed by all property owners within the development under the Restated CC&Rs, see generally Utah Code Ann. § 76-6-206(2) (2008) (stating the elements of criminal trespass).

Onyeabor's standing argument also lacks merit. Here, LEBR is an aggrieved owner and the Restated CC&Rs provided that an aggrieved owner, as well as

the Owners' Association, could bring suit to enforce payment of dues and other obligations under the Restated CC&Rs. And the stranger to the deed doctrine is inapplicable. See generally Potter v. Chadaz, 1999 UT App 95, ¶ 12, 977 P.2d 533 ("Utah law prohibits parties from expressly creating an easement in a land transaction for the benefit of a third party who is not involved in the transaction--i.e., a'stranger to the deed.'"). That an association would be formed to manage the common areas on behalf of the owners of the lots within the complex was clearly anticipated in both the Original and Restated CC&Rs.

Onyeabor's fraud, constructive fraud, and fraudulent nondisclosure claims fail because she has not shown that the Owners' Association or LEBR had a duty to disclose the existence of the Restated CC&Rs or that either made any misrepresentation. See generally Giusti v. Sterling Wentworth Corp., 2009 UT 2, ¶ 53 n. 38, 201 P.3d 966 (listing elements of fraud); Hermansen v. Tasulis, 2002 UT 52, ¶ 24, 48 P.3d 235 (stating elements of fraudulent nondisclosure); Jensen v. IHC Hosps., Inc., 944 P.2d 327, 339 (Utah 1997) (outlining elements of constructive fraud).
Onyeabor has also failed to convince us that the Restated CC&Rs were voidable, as to her, so that she could unilaterally decide to opt out of the Owners' Association. See generally Ockey v. Lehmer, 2008 UT 37, ¶ 19, 189 P.3d 51("Contracts that offend an individual, such as those arising from fraud, misrepresentation, or mistake, are voidable."

Regarding the cross-appeal, LEBR and the Owners' Association argue that the trial court did not consider all of the required attorney fee factors under

Dixie State Bank v. Bracken, 764 P.2d 985 (Utah 1988). See id. at 989-91. The trial court, however, clearly focused on what it considered to be the key factors, namely, the work performed and the scope of the work required. Thus, the challenge is really to the adequacy of the findings to disclose the steps the trial court took in making its ruling, which challenge was not preserved. See In re K.F., 2009 UT 4, ¶¶ 58-64, 201 P.3d 985 (reaffirming the holding of 438 Main Street v. Easy Heat, Inc., 2004 UT 72, ¶ 56, 99 P.3d 801, requiring preservation of challenges to the adequacy of factual findings, and indicating that a challenge to a trial court's failure to disclose analytic steps is an adequacy challenge).

We also affirm the trial court's refusal to award the requested late fees and fines. The late fees and fine provision in the Restated CC&Rs is in the nature of a liquidated damages provision, which provisions will not be enforced if they impose arbitrary penalties, "bearing no reasonable relationship to the actual damages suffered" by the nonbreaching party. Woodhaven Apts. v. Washington, 942 P.2d 918, 920-21(Utah 1997). (Citation and internal quotation marks omitted). The trial court's award in the amount of dues, interest, and over $70,000 in attorney fees and costs adequately compensated Appellees for Onyeabor's breach in failing to pay. And we agree with the trial court's conclusion that the Owners' Association should not be "awarded any fines or penalties against [Onyeabor], since these penalties are not damages which have been sustained and suffered by the plaintiffs due to [Onyeabor]'s breach."

Affirmed. The parties will bear their own attorney fees and costs on appeal.

Gregory K. Orme, Judge

WE CONCUR:

_____

Russell W. Bench, Judge

_____

James Z. Davis, Judge

END OF APPENDIX A

APPENDIX B

IN THE UTAH COURT OF APPEALS

Centennial Pointe Owner's Association; LEBR Associates, LLC, Plaintiffs, Appellees and Cross-Appellants. v. Myriam Onyeabor Defendant, Appellant And cross-Appellee	)	Amended order Case N0. 20070851 FILED Jan 08 2010

This matter is before the court upon Appellant's motion to supplement documentary evidence filed December 14, 2009, and Appellant's petition for rehearing filed December 21, 2009.

Now, therefore, IT IS HEREBY ORDERED that the petition for rehearing and the motion to supplement documentary evidence are denied.

Dated this 8th day of January 2010

___/s/_____
Gregory K Orme, Judge

END OF APPENDIX B

APPENDIX C

IN THE UTAH SUPREME COURT

Centennial Pointe Owner's Association; LEBR	)	
Associates, LLC,	)	FILED
Plaintiffs, Appellees	)	June 11 2010
	)	Case No. 20100183-SC
v.	)	
Myriam Onyeabor	)	
Defendant, Appellant	)	

ORDER

This matter is before the court upon a petition for Writ of certiorari filed March 5th 2010.

IT IS HEREBY ORDERED pursuant to Rule 51(a) of the Utah Rules of Appellate Procedure that the Writ of Certiorari is denied.

For the Court:

/s/_____
Mathew Durrant
Associate Chief Justice

END OF APPENDIX C

APPENDIX D

THE LAW OFFICE OF GREGG K. STEPAN, LLC
9075 South 1300 East, Suite 102B
Sandy, Utah 84094 Telephone: 801-572-6969 Facsimile: 801-572-6970
Attorney for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY

ORDER **ON DEFENDANT'S** PROPERTY OWNERS MOTION **TO DISMISS AND PLAINTIFF'S MOTION TO AMEND AND SUBSTITUTE** PARTIES.

CENTENNIAL POINTE ASSOCIATION, [Registered Nov. 29th 2004], PLAINTIFF	)
v.	) *FILED) Sept 15 2005*) District Court
Myriam Onyeabor	) Civil No. 040918762
Defendant	) Judge Stephen L Roth.

On February 14, 2.005, at the hour of 10:00 a.m., this Court heard oral argument on Defendant's Motion to Dismiss, Plaintiffs Opposition to Defendant's Motion, and Plaintiffs motion to amend and substitute parties. Plaintiffs having appeared by

and through its counsel, Ray M. Beck and Edward T. Vasquez of COHNE, RAPPAPORT & SEGAL, P.C, and Defendant Myriam Onyeabor, having appeared by and through her counsel Gregg K. Stepan. The Court having reviewed the pleadings and supporting materials hereby enters the following:

IT IS HEREBY ORDERED that

1. Defendant's Motion to Dismiss is DENIED;

2. Plaintiffs Motion to Amend and Substitute Parties is GRANTED. Plaintiffs LEBR associates (LEBR) and Centennial Pointe Property owners' Association, Inc (registered on November 29th 2004 are substituted as plaintiffs in this matter.

3. The Court directs the parties to mediate this case after discovery has been completed.

Dated this 15th day of September, 2005.

BY THE COURT

___/s/_____

The honorable Stephen Roth
Third Judicial court

APPROVED AS TO FORM:

/S/

GREGG k STEPHAN

*END OF APPENDIX D

APPENDIX E

Jeffrey Silverstrini (Bar no. 2959)
Edward Vasquez (Bar no. 8640
COHNE RAPPAPORT & SEGAL
257 EAST 200 SOUTH, Suite 700
SALT ALKE CITY UTAH 84111
TELEPHONE: (801)-532-2666
Attorney for Plaintiffs and third-party defendants Bruce Raile and Jennifer Clark

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY

CENTENNIAL POINTE ASSOCIATION, Registered Nov. 29th 2004], nonprofit Corporation	) CORRECTED ORDER ON **PLAINTIFF'S summary JUDGMENT AND MOTIONS TO STRIKE AND JUDGMENT**
v.	) *FILED Jan 28th 2008
Myriam Onyeabor	) Civil No. 040918762
Defendant	) Judge Robert Faust

Pursuant to Rule 60(a) of the Utah Rules of Civil Procedure, the Court hereby enters the following Corrected Order on Plaintiffs' Motion for Partial Summary Judgment and Motions to Strike and Judgment ("Corrected Judgment"), which corrects a clerical error made in the original Order on Plaintiffs' Motion for Partial Summary Judgment and Motions to Strike and Judgment ("Original Judgment"), dated October 1, 2007. The Corrected Judgment clarifies the Original Judgment regarding the Court's ruling

awarding attorney fees, specifically, that the attorney's fee award is part of the Judgment amount. This Corrected Judgment relates back to the Original Judgment executed and entered on October 1, 2007.

CORRECTED JUDGMENT

On May 2, 2007, at the hour of 10:00 a.m., the Court heard oral argument on the following motions: Plaintiffs' Motion for Partial Summary Judgment; Plaintiffs' Motion to Strike the Affidavit of Myriam Onyeabor; Plaintiffs' Motion to Strike the Affidavit of James Walker; Plaintiffs' Motion to Strike the Affidavits of Robert Mills and Travis Healey; Plaintiffs' Motion to Strike the Affidavit of Chinedum Alexander Udeh; Plaintiffs' Motion to Strike American Document Examiner's Expert Report and Exhibits 15 through 21 to Ms. Onyeabor's Opposition Memorandum; Plaintiffs' Motion to Strike Myriam Onyeabor's Answer to Plaintiffs' and Third-Party Defendants' Reply Memorandum of January 17, 2007 and Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment and Exhibits. Ms. Onyeabor did not oppose Plaintiffs' Motion to Strike the Answer to Plaintiffs' and Third-Party Defendants' Reply Memorandum of January 17, 2007 and Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment and Exhibits.

The aforementioned Motions were fully briefed and properly submitted to the Court for decision. Plaintiffs were represented by and through their counsel, Jeffrey L. Silvestrini and Edward T. Vasquez of Cohne Rappaport & Segal, P.C., Donald Ijjanborn was represented by Mark R. Anderson of Williams & Hunt, and Myriam Onyeabor appeared pro *se*.

1. The Court, having reviewed Plaintiffs' Motions to Strike, the affidavits relevant thereto, the exhibits relevant thereto, and the pleadings in this matter, hereby issues the following ruling on those Motions: For the reasons set forth in Plaintiffs' Motion to Strike the Affidavit of Myriam Onyeabor; Plaintiffs' Motion to Strike the Affidavit of James Walker; Plaintiffs' Motion to Strike the Affidavits of Robert Mills and Travis Healey; Plaintiffs' Motion to Strike the Affidavit of Chinedum Alexander Udeh; Plaintiffs' Motion to Strike American Document Examiner's Expert Report and Exhibits 15 through 21 to Ms. Onyeabor's Opposition Memorandum; Plaintiffs' Motion to Strike Myriam Onyeabor's Answer to Plaintiffs' and Third-Party Defendants' Reply Memorandum of January 17, 2007 and Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment and Exhibits, and good cause therefor, Plaintiffs' Motions are GRANTED and the aforementioned affidavits, exhibits, and pleadings are STRICKEN in their entirety.

2. The Court, having reviewed Plaintiffs' Motion for Partial Summary Judgment, the affidavits, deposition testimony and other exhibits appended thereto, Ms. Onyeabor's Opposition to Plaintiffs' Motion, Plaintiffs' Reply Memorandum in support of their Motion, the pleadings in this matter and good cause therefor, hereby RULES as follows:

a. The undisputed facts and evidence in this matter show, as a matter of law, that the Restated Covenants, Conditions and Restrictions of Centennial Pointe recorded in August 2002 (the "Restated Amended CC&Rs") are valid and encumber the entire

Centennial Point development, including Lots 1 and 2 owned by Defendant Myriam Onyeabor. The undisputed facts and evidence in this matter show, as a matter of law, that Ms. Onyeabor hadactual notice of the Restated Amended CC&Rs by virtue of the fact that Ms. Onyeabor received title work, followed by a policy of title insurance for Lot 2, that expressly disclosed that Lot 2 was encumbered by the Restated Amended CC&Rs. The undisputed facts and evidence in this matter show, as a matter of law, that Ms. Onyeabor had record notice of the Restated Amended CC&Rs and that the Special Warranty Deed from Centennial Pointe, LLC to Ms. Onyeabor for Lot 2 expressly states that Centennial Pointe, LLC's conveyance to Ms. Onyeabor was subject to any restrictions of record. Finally, the undisputed facts and evidence in this matter show, as a matter of law, that Ms. Onyeabor, through her conduct and her participation in the Centennial Pointe Owners Association (the "Association"), has ratified the Restated Amended CC&Rs.

b. The undisputed facts and evidence in this matter show, as a matter of law, that Centennial Pointe's developer, Centennial Pointe, LLC, had the authority, pursuant to Centennial Pointe's April 2000 CC&Rs, to amend Centennial Pointe's CC&Rs. The undisputed facts and evidence in this matter show, as a matter of law, that the Restated Amended CC&Rs were validly adopted according to the procedures set forth in the April 2000 CC&Rs, and that the Restated Amended CC&Rs are consistent with the general plan and scheme of Centennial Pointe reflected in the April 2000 CC&Rs, particularly in respect to Ms. Onyeabor's objections thereto. Both the April 2000 CC&Rs and the Restated Amended CC&Rs define Centennial Pointe's common area to include the same property, i.e., parking areas,

sidewalk areas, landscaped areas, and loading dock areas. Both sets of CC&Rs provided for an owners association empowered to levy assessments for maintenance of Centennial Pointe's common areas and to lien property for unpaid assessments. Both sets of CC&Rs provided for a reciprocal easement for use of Centennial Pointe's common areas by all owners, tenants and invitees. The undisputed facts and evidence in this matter show, as a matter of law, that the purpose of Centennial Pointe, LLC's adoption of the Restated Amended CC&Rs was to clarify and refine certain definitions contained in the April 2000 CC&R's which were unclear, but that the adoption of the Restated Amended CC&Rs did not change the configuration of the Centennial Pointe development respecting the location of buildings on the property, or the nature or extent of common areas.

c. The undisputed facts in this matter show that Ms. Onyeabor has failed and refused to pay her pro rata share of Centennial Pointe's common expenses. The undisputed facts in this matter show that Ms. Onyeabor ceased paying her Centennial Pointe assessments in October 2002.

d. The undisputed facts and evidence in this matter show, as a matter of law, that the Association is entitled to its attorney fees incurred in prosecuting this action and defending against Ms. Onyeabor's counterclaims and third-party claims.

e. Based upon the affidavits of Plaintiffs, the Association is entitled to judgment in the amount of $18,749.87 for past due and owing assessments and $5,081.14 accrued as interest, calculated at the rate of 18% per annum.

f. Further, as set forth in the Supplemental Affidavit of Edward T. Vasquez filed with the Court on June 20, 2007, the Association has incurred attorney fees in enforcing Centennial Pointe's CC&Rs and defending against Ms. Onyeabor counterclaims and third-party claims, which necessarily involved defending Centennial Pointe's Restated Amended CC&Rs, in the amount of $136,589.00. The costs in this matter total $6,914.09; combined these figures total $143,503.09. The Association is awarded its reasonable attorney fees in the amount of $68,294.50, and its costs in the amount of $3,088.19, for a combined total of attorney fees and Costs in the amount of $71,382.69.

g. The undisputed facts and evidence in this matter and the reasons set forth in Plaintiffs' Motion for Partial SummaryJudgment, show that Onyeabor's claim for Intentional infliction of emotional distress fails as a matter of law. The conduct that Ms. Onyeabor has asserted is not sufficiently revulsive or outrageous to sustain her claim.

h. The undisputed facts and evidence in this matter, and the reasons set forth in Plaintiffs' Motion for Partial Summary Judgment, show that Myriam Onyeabor has failed to satisfy the nine elements required to show fraud, *see Armed Forces Insur. Exch. v. Harrison,* 2003 UT 14,^j 16, 70 P.3d 35, including, but not limited to, any false representation by either LEBR or the Association. Ms. Onyeabor's fraud claims against the Association and LEBR fail as a matter of law.

i. The undisputed facts and evidence in this matter, and the reasons set forthin Plaintiffs' Motion for Partial Summary Judgment, show that Myriam Onyeabor's claim against Bruce Raile for trespass fails as a matter of law because, *inter alia,* the alleged conduct occurred

on Centennial Pointe's common areas, to which all Centennial Pointe owners and invitees have a reciprocal access easement.

j. The undisputed facts and evidence in this matter, and the reasons set forth in Plaintiffs' Motion for Partial Summary Judgment, show that Myriam Onyeabor's claim against Bruce Raile for assault fails as a matter of law because, *inter alia,* Mr. Raile has never touched Myriam Onyeabor, threatened her, or called her names and that his statement to her were a privileged attempt to enforce the rights of the Association and its members to use common areas of Centennial Pointe to which they held a reciprocal easement.

k. The undisputed facts and evidence in this matter, and the reasons set forth in Plaintiffs' Motion for Partial Summary Judgment, show that Myriam Onyeabor's claims against LEBR for trespass and assault fail as a matter of law because, *inter alia,* Jennifer Clark is not and has never been an employee of LEBR.

L. Plaintiffs' Motion for Partial Summary Judgment did not reach Ms. Onyeabor's claims for nuisance and breach of the CC&Rs against the Association and LEBR, or Ms. Onyeabor's assault claim against Jennifer Clark.

m. The Court concludes as a matter of law that the Association's affirmative claims against Myriam Onyeabor to enforce the April 2000 CC&Rs and the Restated Amended CC&Rs and Myriam Onyeabor's counterclaims' against the Association, excepting Ms. Onyeabor's claims for nuisance and breach of the CC&Rs, and her third-party claims against Bruce Raile, an officer of the Association, share a common

factual basis, are closely related and inextricably intertwined.

n. The Court finds and concludes as a matter of law that Plaintiffs' efforts in developing facts and evidence to establish the validity of the Restated Amended CC&Rs and Ms. Onyeabor's contractual obligation to pay her past due assessments also led to, and were inextricably intertwined with, facts and evidence to defeat Ms. Onyeabor's counterclaims against LEBR for fraud, trespass, and assault.

o. The Court concludes as a matter of law that the Association is entitled to its attorney fees in pursuing its affirmative claims against Myriam Onyeabor to enforce the April 2000 CC&Rs and the Restated Amended CC&Rs and for defending against Myriam Onyeabor's counterclaims against the Association and LEBR, and third-party claims against Bruce Raile, the Association's president. *See Brown v. David K. Richards & Co.*, 1999 UT App 109, ffi| 19-24, 978P.2d470.

p. The Court concludes as a matter of law that the disposition of Plaintiffs' Motion for Partial Summary Judgment in favor of Plaintiffs completely resolves Plaintiffs' claims against Ms. Onyeabor, and that no further judicial action remains to be taken respecting Plaintiffs' claims.

q. The Court concludes as a matter of law that the disposition of Plaintiffs' Motion for Partial Summary Judgment in favor of Plaintiffs wholly disposes of Ms. Onyeabor's counterclaim and third-party claim for intentional infliction of emotional distress, Ms. Onyeabor's counterclaims for fraud against the Association and LEBR, Ms. Onyeabor's counterclaims for trespass and assault against LEBR, and Ms.

Onyeabor's third-party claims for trespass and assault against Bruce Raile. No further judicial action remains to be taken respecting these claims.

r. The Court concludes as a matter of law that there is no just reason for delay of entry of a final judgment in this matter on the Association's claims for damages and attorney fees. The claims asserted by Myriam Onyeabor for nuisance, breach of the CC&Rs, and assault are compensable in damages, however, the claims are so dissimilar from the claims for payment of common area expenses for utilities and maintenance which Myriam Onyeabor and the occupants of her properties have enjoyed, without paying for them, that the Court believes that entry of a final judgment in favor of the Association for the common area expenses, interest and attorney fees incurred in prosecuting this action and defending against the claims of Ms. Onyeabor dismissed to date, are sufficiently separate and distinct as to warrant the entry of a final judgment and certification of that judgment pursuant to Rule 54(b) of the Utah Rules of Civil Procedure.

s. The Court concludes as a matter of law that the disposition of Plaintiffs' Motion for Partial Summary Judgmentin favor of Plaintiffs wholly disposes of Ms. Onyeabor's claims for quiet title and for declaratory judgment. Because the Restated Amended CC&Rs are valid and encumber Ms. Onyeabor's Lots 1 and 2, those claims are DISMISSED with prejudice.

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Motion for Partial Summary Judgment is GRANTED;

2. Judgment is hereby entered in favor of the Association and against Myriam Onyeabor for past due assessments in amount of $18,749.87 plus interest at the rate of 18% to date in the amount of $5.081.14

3. Plaintiffs' request for fines and late fees, as provided for in the April 2000 CC&Rs and Restated Amended CC&Rs, is DENIED;

4. The Association is awarded its attorney fees and costs, as provided for in the April 2000 CC&Rs and in the Restated Amended CC&Rs, for (a) enforcing the CC&Rs; (b) collecting common area assessments and interest owing for Lots 1 and 2, and (c) defending claims against The Association or us oincers oaseu upon meir ngni to eniorce me Kestatea Amended Uu and their right to use the common areas of Centennial Pointe or asserting their right to do so (e.g.the trespass, assault, and emotional distress claims). The Association is awarded its reasonable attorney fees in the amount of $68,294.50, and is awarded its costs in the amount of $3,088.19.

5. Judgment is entered against Myriam Onyeabor in favor of the Association in the total amount of $95,213.70, + interest at the judgment rate of 6.99% from and after date of entry

6. The Sheriff of Salt Lake County is hereby directed to sell Lot 1 and Lot 2 owned by Myriam Onyeabor, for the purpose of satisfying the Judgment, unless Myriam Onyeabor satisfies the same before such sale may be noticed and conducted under law;

7. Myriam Onyeabor's counterclaim for intentional infliction of emotional distress are DISMISSED with prejudice;

8. Myriam Onyeabor's claim for fraud against LEBR and the Association is DISMISSED with prejudice;

9. Myriam Onyeabor's claims for trespass and assault against Bruce Raile are DISMISSED with prejudice;

10. Myriam Onyeabor's claims for trespass and assault against LEBR are DISMISSED with prejudice;

11. In light of the Court's ruling GRANTING Plaintiffs' Motion for Partial Summary Judgment, Myriam Onyeabor's Counterclaims for Quiet Title and Declaratory Judgment alleging that lots 1 and 2 are not burdened by the April 2000 CC&R and the Restated CC&R are DISMISSED with prejudice; and

12. In light of the Court's ruling GRANTING Plaintiffs' Motion for Partial Summary Judgment and Motions to Strike, Myriam Onyeabor's Countermotion for Summary Judgment fails as a matter of law and is DENIED;

13. This Order and Judgment is hereby certified as a Final Order pursuant to the provisions of Rule 54(b) of the Utah Rules of Civil Procedure.

DATED this *28th of* January2008

Approved as to form:

_____

__/s/_____

Mathew Hilton

Attorney for defendant

_____

George hunt

William & Hunt

Attorneys for Donald Sanborn

BY THE COURT:

the Honorable Robert Faust

The Judicial district court

*** END OF APPENDIX E***

APPENDIX F (1)

7624772

04/25/2000 03:12 PM10—00
Nancy Workman
Recorder Salt Lake County, Utah
Landmark title by ZIM, deputy

Return to:Myriam onyeabor
1078 East 2700 South
Salt lake city Utah 84106

SPECIAL WARRANTY DEED

Centennial Pointe LLC a Utah limited liability company who acquired title as Centennial Pointe LLC grantor

Of Salt Lake City, county of Salt Lake State of Utah hereby conveys and warrants against the acts of grantor only

Myriam Onyeabor grantee

Of Salt Lake City County of Salt Lake, State of Utah
For the sum of ten dollars and no.....Dollars,
The following described tract of land in Salt lake county State of Utah

Lot 1, AMENDED PORTION OF LOT 5 PHASE V CENTENNIAL INDUSTRIAL PARK, ACCORDING TO THE OFFICIAL Plat thereof of, filed in book "99-P" of the Plats at page 117 of the official records of Salt lake County Recorder
SUBJECT to current general taxes, easements, restrictions and rights of way of record.
Witness, the hand of said grantor, this 24th day of April AD 2000.
Centennial Pointe LLC, a Utah limited Liability company
By _____/s/_____ Donald Sanborn
State of utah)
County Of salt Lake)ss
On the 24th day of April AD 2000. Donald Sanborn personally appeared before me, Donald Sanborn, manager of Centennial Pointe LLC a Utah limited liability company who acquired title as Centennial Pointe LLC. The signer of the within instrument, who duly acknowledged to me he executed the same for and on behalf of Centennial Pointe LLC a Utah limited liability company who acquired title as Centennial Pointe LLC, as manager therein

_____/s/_____
NOTARY PUBLIC

My commission expires 7/17/00 Residing at Salt lake city Utah
LTC # 23989

Continued....

APPENDIX F (2)

7729575 04/25/2000 03:12 PM10—00
Return to: Myriam onyeabor Nancy Workman
1078 East 2700 South Recorder Salt Lake County, Utah
Salt lake city Utah 84106 Landmark title by ZIM, deputy

SPECIAL WARRANTY DEED

Centennial Pointe LLC a Utah limited liability company who acquired title as Centennial Pointe LLC grantor

Of Salt Lake City, county of Salt Lake State of Utah hereby conveys and warrants against the acts of grantor only

Myriam Onyeabor grantee

Of Salt Lake City County of Salt Lake, State of Utah
For the sum of ten dollars and no.....Dollars,
The following described tract of land in Salt lake county State of Utah

Parcel 1, AMENDED PORTION OF LOT 5 PHASE V CENTENNIAL INDUSTRIAL PARK, ACCORDING TO THE OFFICIAL Plat thereof, filed in book "99-P" of the Plats at page 117 of the official records of Salt lake County Recorder.

Parcel 2: The right of ingress and egress over common areas as defined in the Declaration of covenants, conditions and Restrictions of AMENDED PORTION OF LOT 5 PHASE V CENTENNIAL INDUSTRIAL PARK,A planned development development subdivision recorded April 19th 2000 as entry # 7621217 in Book 8356 at page 2534 of the official records.

SUBJECT to current general taxes, easements, restrictions and rights of way of record.

Witness, the hand of said grantor, this 28th day of September AD 2000.
Centennial Pointe LLC, a Utah limited Liability company
By _____/s/_____ Donald Sanborn
State of utah)
County Of salt Lake)ss
On the 28TH Day of September AD 2000. Donald Sanborn personally appeared before me, Donald Sanborn, manager of Centennial Pointe LLC a Utah limited liability company who acquired title as Centennial Pointe LLC. The signer of the within instrument, who duly acknowledged to me he executed the same for and on behalf of

Centennial Pointe LLC a Utah limited liability company who acquired title as Centennial Pointe LLC, as manager therein

/s/

Michele Liechty
NOTARY PUBLIC

My commission expires 7/17/00 Residing at: Centerville Utah
LTC # 23989

APPENDIX G

ISSUE PRESERVATION

ISSUE I: RESPONDENTS' LACK OF STANDING ON PAGE

ISSUE I, Questions 1 and 2, were, generally, preserved: in Ms Onyeabor's Motion to dismiss (Appendix L (1) & L (2)) and Respondents' countermotion to substitute parties (Appendix L (3)) is also attached.
Preserved also, Opening Brief Chapter Page 50-51

SPECIFIC REFERENCES ARE PRESERVED AS FOLLOWS:
1) Association II and LEBR lack standing because they are corporate entities that do not qualify for substitution under Utah laws.
Preserved: See appendix L (2). Chapters II and III
Preserved: See also Onyeabor's Writ of Certiorari to UT Supreme Ct page 18-19. Reply Brief Pages 1- 4

2) The provision more specific in application governs over the more general provision
Preserved: See Onyeabor's "Writ" to Utah Supreme Court Page 15-16. Chapter V (E)

3) Conditions precedents (Laws Ordinances, requirements of CC&R.) were not met which precludes the grant of attorney's fees...
Preserved: Opening Brief Chapters VI and VII Pages 39-43

4), Association I was non existent and had no rights to pass on to respondents. Order was not retroactive
Preserved: See Opening Brief, Page 34-39 Chapter V. see also Appendix L(2) Chapters II and III, .
Onyeabor's "Writ" to Utah Supreme Court, Page 4.
See Court Orders at Appendix A & D

5) Liens are only Subject to Judicial Foreclosure:
Preserved: Opening Brief, Pages 42-45. Chapter VII.

6) Utah Code Ann. ¶ 48-2a-1002 (now 48-2c-1702), 2009- Association II, which did not exist when issues in dispute arose may not substitute and create standing. Preserved: See also Onyeabor's Writ of Certiorari to UT Supreme Ct page 18-19. Reply Brief Chapter VI(A)

7) Jurisdiction is an issue of law, not of discretion or equity
Preserved: at appendix L (2) chapter II and III

8) Part performance of the 2002 agreements removed them from statute of fraud
Preserved: Opening Brief Chapter VIII pages 46-48
Preserved: "Writ" to Utah Supreme court pages 8-9 2(C)

9) Pursuant to Utah Rule 23A (b), LEBR can only represent the group against Assoc..
Preserved: "Writ" Page 18-19 Chapter VI(A)

10)The Court misinterpreted and misapplied the "*disclaimer*"
Preserved : See Onyeabor's "Writ" to Utah Supreme Court Page 15-16. Chapter V(E). Preserved Reply Brief Chapter V (i and ii) pages 9-10.

****

Hereafter made provision
Lot 1 was not subject to the Restated CC&R.
Respondents and Onyeabor agreed
Preserved: See Onyeabor's "Writ" to Utah Supreme Court, Page 7. Onyeabor's Opening Brief page 20 (D) ¶26-¶28. Reply Brief Page 4-5 Chapter II

11) LEBR made up for its deficiency by blockading Onyeabor's property. Preserved: Robert Mills at Appendix R ¶12-16.
Preserved: See Onyeabor Appendix O ¶3-26. (R 1478)
Preserved: See Appendix P#1 P#2 P#3 P#4
Preserved: Onyeabor's Petition for Writ to Utah Supreme Court, Page 17, Chapter H

12) Rule 15 Civ.P. Does Not Allow Creation of Original Jurisdiction where none existed.
Section 16-6a-611- neither the bylaws nor CC&R would vest right in either Association
Appendix L(2) chapters II and III
Preserved: Rehearing chapter I(2) Page 1-2

13) LEBR is fully responsible for dissolved Association I's bills after dissolution in September 27th 2001, not Ms Onyeabor.
Preserved: Opening Brief pages 44-45 chapters VII. Page 42-45. ; Chapter VII. Onyeabor's "Writ" to Utah Supreme Court, Pg 18-19; Reply Brief Pg 1-2

ISSUE #2 JUDICIAL TAKING.
14) Ms onyeabor extensively argued that there is ambiguity in both CC&Rs
Preserved: Rehearing Brief Chapters III and IV, Pages 8-12. Onyeabor' Opening Brief Chapter IX (A-

D) Pages 52-55 and Chapter X, page 56, Opening Brief Chapter VI

15) Appellate actions constitute a taking, Amendments and rezoning without permit, via court order, and a breach of separation of powers between the legislative and the judiciary.
Preserved: See "Writ" to Utah Supreme Court, Chapter I, Pages 4-8 and Chapter V (H) page 18.

16) Corporate laws demand **open meetings**, not Constructive Notice as acceptable method to inform owners of change. Violation of corporate Acts
Preserved: Rehearing Brief: Chapter II (1&2), pages 5-6. Preserved: Reply Brief page Chapter VI,(2) pages 10-12
Preserved: "Writ" to Utah Supreme Court Chapter V (A) Pages12-13

17) Agreements of 2002—
Part performed. Between 2002-onset of litigation, Opening Brief. Pg 45-50 (Chapter VIII)

18) Ms Onyeabor quiet title claims.
Preserved: Reply Brief. Page 24-25 and Page 31; Onyeabor's "Writ" to the Utah Supreme Court Page 7 Onyeabor had argued Denial her quiet title is a denial of due process: at Opening Brief chapter III (A), Pages 24-25

19) Violation of Ordinances and Codes:
Preserved: Onyeabor's "Writ" to Utah Supreme Court Chapter II pages 9-10. Reply Brief Page 9-11.

20) Violation of Corporate laws:

Preserved: see appendix L (1) and L (2); Reply Brief pages 1-2.

21) Associations cannot claim easements that "run with the land"-touch and concern the land reserved: "Writ" to Sup Ct chapter V (H) page 17- 18

ISSUE # III- Separation of powers

22) Breach of separation of powers between the legislative and the judiciary.
Preserved: Utah law does not give jurisdiction to the appellate court on land use issues. See Onyeabor's "Writ" to Utah Supreme Court, Chapter IV, pages 11-12

23) Appellate actions constitute a taking, Amendments and rezoning without permit, via court order, and a breach of separation of powers between the legislative and the judiciary.
Preserved: See "Writ" to Utah Supreme Court, Chapter I, Pages 4-8 and Chapter V (H) page 18.

24) Police documented harassment of Ms Onyeabor's
Reserved: See Onyeabor's Reply Brief Page24- 26.

25) There was no contract because contract requires mutual assent and "meetings of the mind."
Preserved: Writ" to Utah Supreme Court, Chapter V, Pages 13-14

APPENDIX H

CONSITUTIONAL- STATUTORY PROVISIONS

The Fifth Amendment of the United States Constitution provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment of the United States Constitution provides: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Separation of Powers Provision in Utah Constitution

Article V, Section 1. [Three departments of government.] The powers of the government of the

State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Separation of Powers Provisions in the United States Constitution

Article I, Section. 1:
All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article II, Section. 1:
The executive Power shall be vested in a President of the United States of America.

Article III, Section. 1:
The judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish

Article VI: Clause 2 "The Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Federal Rule 17(b) of civil procedure:

Capacity to Sue or Be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other **unincorporated** association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by Title 28, U.S.C., Sections 754 and 959(a).

END OF APPENDIX H

APPENDIX I

*Utah Code Annotated: aka "UCA"
*Salt Lake City County Ordinance: aka "SLCCO"

Rules, Codes & Ordinances, CC&R

(1) RULES

Federal Rule 17 (b) civil procedure:

(b) Capacity to sue or be sued ... The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held.

Utah Rule of Civil proc. 17 (d)

(d) Associates may sue or be sued by common name. When two or more persons associated in any business either as a joint-stock company, a partnership or other association, not a corporation, transact such business under a common name, whether it comprises the names of such associates or not, they may sue or be sued by such common name. Any judgment obtained against the association shall bind the joint property of all the associates in the same manner as if all had been named parties and had been sued upon their joint liability. The separate property of an individual member of the association may not be bound by the judgment unless the

member is named as a party and the court acquires jurisdiction over the member.

Utah Rule 17(b) Minors or incompetent persons. An un-emancipated minor or an insane or incompetent person who is a party"

Utah Rule 17(c)(3) " When a minor defendant resides out of this state, the plaintiff, upon motion therefore, shall be entitled to an order designating some suitable person to be guardian ad litem for the minor defendant"

Utah Rule 17(c)(4) "When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action/proceeding."

Utah Rule of Civil proc. 23A (b) "The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association."

Rule 56 Utah R. Civ.P (c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(2) DEFINITION OF CODES & ORDINANCES

Utah Code ann. 17-27a-101. Title.
This chapter is known as the "County Land Use, Development, and Management Act."

Utah Code ann. 10-9a-101. Title.
This chapter is known as the "Municipal Land Use, Development, and Management Act."

Utah Code Ann. ¶10-9a-606 "Common area parcels on a Plat - No separate ownership- Ownership interest equally divided among other parcels on Plat and included in description of other parcels. (1) A parcel designated as common area on a Plat recorded in compliance ... may not be separately owned or conveyed independent of the other parcels created by the Plat."

Penalty: Utah Code Ann. ¶ 10-9a-803(2): "Violation of any of the provisions of [Utah Code Ann. ¶ 10-9a] or of any ordinances adopted under the authority of [Utah Code Ann. ¶ 10-9a] is punishable as a class C misdemeanor."

Utah Code Ann. ¶ 42-2-10. Penalties "Any person who carries on, conducts, or transacts business under an assumed name without having complied with the provisions of this chapter, and until the provisions of this chapter are complied with: (1) shall not sue, prosecute, or maintain any action, suit, counterclaim, cross complaint, proceeding in any .. Courts of this state."

Utah Corporate Act ¶16-6a-1405 (1) "A dissolved

nonprofit corporation continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs."

Utah Corporate Act ¶16-6a-204: "All persons purporting to act as or on behalf of a nonprofit corporation, knowing there is no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting."

Utah Code Ann. ¶ 48-2a-1002 (now 48-2c-1702, 2009). "In a derivative action, the plaintiff must be a partner at the time of bringing the action and: (1) must have been a partner at the time of the transaction of which he complains."

Utah Code Ann. ¶ 10-9a-505

(1) (a) The legislative body may divide the territory over which it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter.

(b) Within those zoning districts, the legislative body may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land.

(c) A municipality may enact an ordinance regulating land use and development in a flood plain or potential geologic hazard area to:

(i) protect life; and

(ii) prevent:

(A) the substantial loss of real property; or

(B) substantial damage to real property.

(2) The legislative body shall ensure that the regulations are uniform for each class or kind of

buildings throughout each zoning district, but the regulations in one zone may differ from those in other zones

Utah Code Ann. ¶ 10-9a-602

(1) The planning commission shall:

(a) prepare and recommend a proposed ordinance to the legislative body that regulates the subdivision of land;

(b) prepare and recommend or consider and recommend a proposed ordinance that amends the regulation of the subdivision of the land in the municipality;

(c) provide notice consistent with Section **10-9a-205**; and

(d) hold a public hearing on the proposed ordinance before making its final recommendation to the legislative body.

(2) The municipal legislative body may adopt or reject the ordinance either as proposed by the planning commission or after making any revision the legislative body considers appropriate.

Utah Code Ann. ¶ 10-9a-302.

The planning commission shall make a recommendation to the legislative body for:

(1) a general plan and amendments to the general plan;

(2) land use ordinances, zoning maps, official maps, and amendments;

(3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;

5(b) (iii): participant to be heard in each public hearing on a contested application.

Utah Code Ann. ¶10-9-1001(3) (a) -Now Utah Code Ann. ¶ 10-9a-801

(1) No person may challenge in district court a municipality's land use decision made under this chapter, or under a regulation made under authority of this chapter, until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.
(2) (a) Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local land use decision is final.
(3) (a) The courts shall: (i) Presume that a decision, ordinance, or regulation made under
The authority of this chapter is valid; and (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.

Utah Code Ann. ¶ 42-2-5

(4) A Certificate Filed With The Division Of Corporations And Commercial Code Under This Chapter Shall Include The Following Notice In A Conspicuous Place On The Face Thereof:

*Notice - The Filing Of This Application And Its Approval By The Division Of Corporations And Commercial Code Does Not Authorize The Use In The State Of Utah Of An Assumed Name In Violation Of The Rights Of Another Under Federal, State, Or Common Law (See Utah Code Ann. Sections 42-2-5 Et Seq.).

Utah Code Ann. ¶ 57-8-6 "Each unit/Lot owner shall be entitled to the exclusive ownership and possession of his unit/Lot."

Utah Code Ann. ¶ 57-8a-102(4) "Common areas" means property the association(a) owns; (b) maintains (c) repairs; or (d) administers."

Utah Code Ann. ¶ 57-8-7. Common areas and facilities.
(2) Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentages or fractions expressed in the declaration. The declaration may allocate to each unit an undivided interest in the common areas and facilities proportionate to either the size or par value of the unit.
(3) Except as otherwise expressly provided by this act, the undivided interest of each unit owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of two-thirds of the unit owners expressed in an amended declaration duly recorded. The undivided interest in the common areas and facilities shall not be separated from the unit to which it appertains and shall be considered to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

Utah Code Ann. 57-8-4. Status of the units. Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered and may be

inherited or devised by will and be subject to all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of all other units, and the separate units shall have the same incidents as real property, and the corresponding individual titles and interests therein shall be recordable.

UCA¶ 16-6a-707 (formerly ¶ 16-6-61)

(1) Unless otherwise provided in the articles of incorporation and Subsection (5), and subject to the limitations of Subsection **16-6a-1704**(3), any action that may be taken at any annual or special meeting of members may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all members entitled to vote on the action were present and voted.

(2) (a) Unless the written consents of all members entitled to vote have been obtained, notice of any member approval without a meeting shall be given at least 10 days before the consummation of the transaction, action, or event authorized by the member

(4) (a) A member action taken pursuant to this section is not effective unless all written consents on which the nonprofit corporation relies for the taking of an action pursuant to Subsection (1) are:

(i) received by the nonprofit corporation within a 60-day period; and

(ii) not revoked pursuant to Subsection (3).

(b) Action taken by the members pursuant to this section is effective:

(i) as of the date the last written consent necessary to effect the action is received by the nonprofit corporation; or

(ii) if all of the written consents necessary to effect the action specify a later date as the effective date of the action, the later date specified in the consents.

(c) If the nonprofit corporation has received written
consents in accordance with Subsection (1) signed by all members entitled to vote with respect to the action, the effective date of the member action may be any date that is specified in all the written consents as the effective date of the member action.

Utah code ann. 16-6a-1704(3): Section **16-6a-707** does not operate to permit a nonprofit corporation in existence prior to April 30, 2001, to take action by the written consent of fewer than all of the members entitled to vote with respect to the subject matter of the action, until the date a resolution providing otherwise is approved either:

(a) by a consent in writing:

(i) setting forth the proposed resolution; and

(ii) signed by all of the members entitled to vote with respect to the subject matter of the resolution; or

(b) at a duly convened meeting of members, by the vote of the same percentage of members of each voting group as would be required to include the resolution in an amendment to the nonprofit corporation's articles of incorporation.

Utah Code 16-6a-611. No property right.

A member does not have any vested property right including any right relating to management, control, purpose, or duration of the nonprofit corporation, except as provided

by:

(1) the bylaws of a mutual benefit corporation; or

(2) other law.

Utah Code Ann ¶ 78-2a-3, (now ¶ 78A-4-103(2) (i)& (ii)

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over: (i) (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies. (ii) a challenge to agency action under Section **63G-3-602**;

Penalty: UCA ¶ 10-9a-803(2):

(2) Violation of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter is punishable as a class C misdemeanor upon conviction either: (a) as a class C misdemeanor; or

(b) by imposing the appropriate civil penalty adopted under the authority of this section.

Utah Code Ann. ¶ 10-9a-608(b) If a petition is filed under Subsection (1)(a), the land use authority shall hold a **public hearing** within 45 days after the day on which the petition is filed if:

(i) any owner within the plat notifies the municipality of the owner's objection in writing within 10 days of mailed notification; or (ii) a public hearing is required because all of the owners in the subdivision have not signed the revised plat.

Utah Code Ann. 10-9a-103(6), "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required."

****

Penalty: SLCCO ¶18.20.040 Lots. (B). All lots shown on the preliminary and final plats must conform to the minimum requirements of the zoning title, if any, for the zone in which the subdivision is located, and to the minimum requirements of the health department for water supply and sewage disposal.

Municipal Ordinance. ¶17.80.050 (L): Once the overall development plan has been approved by the county commission, no changes or alterations to such plan shall be made without first obtaining approval of the county commission.

SLCCO ¶18.18.050 Other amendments to subdivisions.
An amendment to a recorded subdivision that involves the alteration or removal of an easement, private right-of-way, condition, limitation, or special requirement shall follow the approval procedure outlined in Section 18.08.010

SLCCO ¶18.18.010:Procedure Generally.
The planning commission shall be the land use authority for subdivisions. In order to assure that each subdivision fully complies with the provisions of this title, the director or director's designee shall administer formal application and review procedures for subdivisions. An application shall not be deemed complete until the full application, fees and all required materials have been submitted. The payment of a partial fee and submission of preliminary plans for a pre-submittal review does not constitute a complete application.

Ordinance¶ 19.78.070

A planned unit development which will contain uses not permitted in the zoning district in which it is to be located will require a change of zoning district and shall be accompanied by an application for a zoning amendment, except that any residential use shall be considered a permitted use in a planned unit development which allows residential uses and shall be governed by design and other requirements of the planned unit development permit; provided, further, that in single-family zones, not including the FR zones, only single-family dwellings may be allowed in the planned unit development. Hotels, motels, lodges, mobile home parks, etc., shall not be considered residential uses for the purposes of this chapter.

Municipal Ordinance¶ 19.78.090

B.Lot area, lot width, yard and coverage regulations shall be determined by approval of the site plan.

Municipal Ordinance ¶19.78.150

A. Upon approval of a planned unit development, construction shall proceed only in accordance with the plans and specifications approved by the planning commission and in conformity with any conditions attached by the commission to its approval.

B. Amendments to approved plans and specifications for a planned unit development shall be approved by the planning commission and shown on the approved plans.

SLCCO¶20.24.030 H. "The side lines of all easements shall be shown by fine dashed lines. The widths of all easements and sufficient ties thereto to definitely locate the same with respect to the subdivision shall be shown. All easements shall be clearly labeled and identified."

Penalty: SLCCO ¶ 20.36.020 "It shall be unlawful for any person to fail to comply with the provisions of this title, and failure to comply with the provisions of this title shall constitute a class C misdemeanor."

SLCCO ¶ 21A.28.020: M-1 Light Manufacturing. District:

A. Purpose Statement: The purpose of the M-1 light manufacturing district is to provide an environment for light industrial uses that produce no appreciable impact on adjacent properties and desire a clean attractive industrial setting.

B. Uses: Uses in the M-1 light manufacturing district as specified in section 21A.28.040, "Table of Permitted and Conditional Uses for Manufacturing Districts", of this chapter are permitted subject to the general provisions set forth in section 21A.28.010 of this chapter.

C. Lot size 1. Minimum Lot Area: Twenty thousand (20,000) square feet.

Penalty: SLCCO ¶21A.54.100: Selling property with lot sizes below the approved lot size of 20,000 sq ft or Lot size allowed under a conditional use permit or any other violation of the permit would lead to the revocation of the permit.

(3) DEFINITIONS OF THE CC&R

Original CC&R ¶1.5 (a) "common areas are the property and interest therein, excluding the lots.

Original CC&R ¶1.5 (b): "All Common Areas facilities designated as such on the Plat Map.

Original CC&R ¶1.5 (e): "common areas are all portions of the property, not specifically located within the Lot."

Restated ¶ CC&R 1.6: "Common element shall mean all utility lines, lighting, not attached to the building, fences, landscaping, parking spaces, load/receiving areas and other portions of the property other than the buildings." Therefore, lot is building only

Restated CC&R 1.10: "Lot shall mean each Lot shown on the Plat, including the building and any other improvements located thereon."

Original CC&R ¶1.9: Lot is "Separate space within the property intended for independent use and occupancy . . . designated as Lot on the Plat... Each Lot shall include its appurtenant percentage interest in the common areas."

Restated CC&R (¶1.6) , "common element shall mean all utility lines, lighting, not attached to the building, fences, landscaping, parking spaces, load/receiving areas and other portions of the property other than the buildings," So, Lot is "building only."

Restated CC&R ¶ 3.1 define "The Plat shows each Lot. It's Lot number, location, size and dimensions."

Original CC&R ¶ 3.1 "The Plat shows each Lot. It's Lot number, location, size and dimensions."

Original CC&R 4.1: Lot: "Estate of an owner. Each owner shall own fee simple title to its lot(s)."

Restated ¶ CC&R 4.1: Lot "Estate of an owner. Each owner shall own fee simple title to its lot(s)."

Original and Restated CC&R¶ 4.3: Inseparability. No part of al lot or the legal rights comprising ownership of a Lot and the percentage interest appurtenant to such Lot shall always be conveyed, devised, encumbered, or otherwise affected only as a **complete Lot .** Every gift, devise, bequest, transfer, encumbrance, or conveyance, of a Lot shall be presumed to be gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Lot."

Original CC&R ¶ 4.4: Declarant reserves the right to make minor adjustments in some or all of the percentage interest... for the purposes, but for only the purpose of assuring that the total percentages equal 100%.

"Hereafter made" provision: Original ¶ 4.11 & Restated ¶ 4.9: "All conveyances of Lots *hereafter* made, shall be construed to grant and reserve such reciprocal easements as shall give effect to the provisions.

Original CC&R 4.5: partition not permitted. The common areas shall be **owned** in common by all the owners... No owner may subdivide or partition its Lot.

Restated CC&R 7.1, "The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management, control, maintenance and repair of the Common Elements and all improvements thereon ..."

"The disclaimer" Original CC&R, (XIV¶ (b)),
"Until the Declarant [Centennial Pointe LLC] has sold all Lots, Declarant shall have the right unilaterally to amend and Supplement this Declaration **and the Plat** to correct any technical errors or to clarify any provision to more fully express the Intent of the Declarant for development and Management of the Project."

CC&R XVIII ¶18.2: "Covenants to run with the land this declaration and all provisions hereof shall constitute covenants to run with the land, or equitable servitudes, as the case may be.

Original CC&R 5.2(a) "Each Owner and Occupant shall keep and maintain, or cause to be kept and maintained ... it's Lot.

***END OF APPENDIX I ***

APPENDIX J

Affidavit of Paul Bezdijan (Record at 2124)

MYRIAM N ONYEABOR (Pro se)
P.O 521297
Salt Lake City UT. 84152
801-259-1195
FAX 801-487-9005

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY STATE OF UTAH

LEBR ASSOCIATE & Centennial Pointe Owners Association Vs Myriam Onyeabor Defendant V. Bruce Raile and Jennifer Clark Donald Sanborn.	**Affidavit of Paul Bezdijan** Civil case No. 040918762 Judge Faust

STATE OF UTAH
PAUL BEZDIJAN, being duly sworn and upon oath and states the following:

1) I am over the age of 18, capable and competent to testify in a court of law.
2) That I have personal knowledge of the incidents involved in this case and can testify-to them.
3) That I am the owner and CEO of Northwest Machine, a Utah corporation.

4) That I was a property owner at Centennial Point Subdivision from Sept 2000-Nov 26th of 2003 when I sold my property. I did own lots 4, 5, 6, 7.
5) That Ms Onyeabor did complain to me on numerous occasions, starting early 2001, about Mr. Raile's employees parking and blocking the entryways into her buildings while I was there. And *I* had been a witness at a couple of meetings when Ms Onyeabor was upset and confronted Mr. Raile about how Mr. Raile's numerous employees were blockading the entrances into Ms Onyeabor's business and refusing to move their vehicles when asked to.
6) That on around February of 2002, we held an emergency meeting of all the property owners of Centennial Point Industrial park in order to resolve ambiguities in the CC&Rs. That the president of the Association, Mr. Raile, at my request, called this meeting. That we held this meeting in order to debate and change the CC&RS of Centennial Point Industrial.
7) That the aim was to give full and uninhibited control and powers over each "Lot" as it appears on the Plat map to the owner of the "Lot," so that each property owner was independent enough to make the best use of their property as he/she sees fit.
8) The other objective was to establish that the owner had exclusive power and control over the "Lots" and not the Centennial Point Association.
9) The next goal was to leave the management and maintenance of each "lot" completely in the hands of the owner of each lot, as the "lot" is depicted on the Plat map, in order to cut costs and make the maintenance affordable for each owner, and promote independent use of property by individual owners.
10) Every owner was present at the meeting. The material facts as to what the meeting was about was clear to every owner and it was a meeting to debate and change the

CC&RS. We debated the issues for a while before putting the covenants to a vote. Ms Onyeabor and I, (Mr. Paul Bezdijan), had voted to pass the covenants we suggested (listed below), we had the 67% required by the bylaws, and so the covenants passed.

11) Ms Onyeabor was present. Mr. Raile of Sun optics was present. I, Paul Bezdijan, was present. Mrs. Laura Raile was present and served as secretary.

12) Ms Onyeabor owned 2 lots and so held 25% voting rights. 1 owned 4 Lots **and so held** 50% voting rights. Mr. Raile had a single double-Lot and so held 25% of the voting rights. 67% was required to change the CC&RS. Mr. Raile was against the amendments, so Ms Onyeabor and I voted in the amendments because we collectively had 75% voting rights, so the declarations and easements we suggested were passed.

13) Here listed below are all details of the covenants we passed that day:

a) Exclusive control of lots, as depicted on the Plat Map, by each owners and
owners only

b) Exclusive maintenance of lots, as depicted on the Plat Map, by individual
owners only

c) Complete separation of water and security lights from one another and meters be installed for each owner.

d) Free and independent use of property by each owner of such lots.

e) Every owner should exit from the access way on his property.

f) That all owners separate and be as independent from one another as much
as possible in order to minimize conflicts.

g) Ms Onyeabor and Mr. Raile should investigate about separating their common Utility room

h) Centennial Point Association had no further rights to do anything on any owner's lots without owner's permission

i) Individual owners had no right to do anything on any other owner's lots without the permission of the Lot owner.

14) Mr. Raile never gave me a reason as to why the covenants were never recorded at the county but I had assumed that he was not happy about the fact his position did not win. The important thing was that all property owners abided by the covenants and understood what the material facts and implications of the meeting and the voting process were, and this is based on the fact that no owners had expressed to me that they did not understand we had chnaged the CC&Rs. We lived with the casements we passed that day as oral agreement and simply abided by them.

15) It was clear that everybody was abiding by the covenants and there was never any complaint by either Ms Onyeabor or Mr. Raile about any errors in the meeting or in the voting process. I did not observe any errors myself. Mr. Raile dissented and that was his right. Ms Onyeabor and I voted to pass the covenants and that was our right too.

16) I was not an official of Centennial Point Association and so could not do the recording of easements at the county. As I recall, Ms Onyeabor was not an official of Centennial Point Association and so could not record the easements.

17) Soon after the covenants were passed, I was able to separate my meters and wateriines from the other owners, as agreed, since my building was in the rear and separate from Lots 1. 2 and 3. That Ms Onyeabor and Mr Raile shared a common wall, had commom wateriines and security light, and so were having a tougher time separating theirs. I do recall that Ms Onyeabor and Mr. Raile were still receiving a common bill for those two items only, after the separation. 1 do recall that Ms Onyeabor used parts of my

lots a few times and she got my permission each time. All owners abided by the covenants we passed that day.

18) The owners were now so independent from one another after the CC&R vote in 2002 that I took it a step further and wanted to completely exist independent of the subdivision since I had no common walls with Mr. Raile and Ms Onyeabor. I was in the process of investigating, at the County, about the possibility of separating my property completely from the subdivision, and being an independent property, when I had to sell my property and leave Centennial Point. So I never got to accomplish the total separation.

19) I did my own maintenance starting from the date the covenants were voted in early 2002. Myriam Onyeabor did her own maintenance and Mr. Raile did his maintenance.

20) Centennial Point Association was no longer authorized, after the vote, to exercise control on areas designated as "Lots" on the Plat. Centennial Point Association did not have any further authority on "Lots," or the power to maintain the "Lots." It was clearly rectified that "Lot," belonged to the owner, absolutely:- to manage, maintain and control.

21) That I did my maintenance up until the time I sold my property and left Centennial Point, November 26lh of 2003 (after selling lots 4,5 6) or December 23rd 2003 (after selling Lot 7 to Snowcap realties).

22) I do recall vividly that Myriam Onyeabor and Mr. Raile were each still doing their separate maintenances at that time I was leaving.

Dated this_____12th_____day of June 2007

____/s/_____Paul bezdijan

Subscribed and Sworn before me this__12th____day of June 2007.

State of Utah

County of __Salt Lake
On this_12__day of June in the year 2007
Before me_____Jon Boyle
Personally Appeared_____Paul bezdijan
Proved on the basis of ---evidence
To be the person(s) whose name(s) is/are subscribed
To this instrument and acknowledged he/she/they w executed the same. Witness my hand and official seal.
__/s/__- Jonathan boyle

Notary Public. Jonathan Boyle. U of U Medical Center, Bldg 521, Salt Lake City Utah 84112. My commission expires June 7th 2009- STATE OF UTAH.

*END OF APPENDIX J *

APPENDIX K

AFFIDAVIT

I, Deborah Martin, Secretary for the Board of Adjustment on Zoning for Salt Lake City, Utah, do hereby certify that the attached documents (5) are full, true and correct copies of Planning Division File 410-319 (Petition 400-98-53) as they appear in the record of the City & County Building, 451 South State Street, Salt Lake City Utah.

_/s/_____ Deborah Martin, Secretary

STATE OF UTAH)ss

City and County of Salt Lake)

The foregoing instrument was acknowledged before me, 3rd day of December 2009, by Deborah martin, secretary for the board of adjustment

Scott Crandall
Notary public STATE OF UTAH
451 South state Street RM 415
Salt Lake City Utah 84111

__/s/_____

Notary public residing in salt Lake County, Utah

Continued ...

Appendix K (1)

SALT LAKE CITY CORPORATION

Department of Community Development
Planning and Zoning division

Alexander C Ikefuna
Planning Director
Douglas wheelwright AICP
Deputy planning director
director
Cheri Coffey AICP
Deputy Planning director

Ross C anderson
Mayor
Louis Zunguze
Community Dev.

Myriam Onyeabor And
To Whom It May Concern

Re: Amended Portion of Lot 5, Phase V, Centennial Industrial Park, a Planned Development Subdivision, Salt Lake County Recorder's Office entry # 7341882 at Book #99-5P, Page 117.

On November 15, 2005, Ms. Myriam Onyeabor came into the office of the City Planning Division, Salt Lake City Corporation, 451 South State Street, Salt Lake City, Utah 84111, and reviewed the office subdivision file (#S98-43) concerning a subdivision amendment application that was processed, and produced the above referenced subdivision amendment plat. Ms. Onyeabor was granted access to review the file and was given an opportunity to mark various pages within that file for subsequent copying by City employed secretaries at her cost. This subdivision file is the permanent record of the subdivision amendment process, which produced the above referenced plat, which was recorded with the County Recorder on May 3, 1999.

The above referenced subdivision amendment plat is the official subdivision plat of record, since no other subsequent amendment applications have been presented to the City for processing according to our City Code Title 20 -Subdivision Ordinance. There has never been an application for condominium conversion presented to the City for this property and there is no public record of any condominium approval ever having been granted or considered by the City. If anyone has additional question on this matter, I am the best contact point for the City on this issue.

Sincerely:

Douglas L. Wheelwright, AICP

Deputy Planning
Director
Cc: Alex Ikefuna

110

451 SOUTH STATE STREET. RODM 4O6,
SALT LAKE CITY, UTAH 84 11 1
PHONE: B01-535-7902 FAX: SO 1-5 3 5-6 1
74 TD D: B D 1-5 3 5-6O21 www.SLCGOV.COM

Continued ...

APPENDIX K (2)

SALT LAKE CITY CORPORATION
Department of Community

And economic development
Planning division

Wilford H. Sommerkorn Ralph Becker, Mayor
Planning Director Frank b. Bray, Director
PATRICIA CDMAREL
Community & econ. Dev.

Assistant Planning Dir.
December 10, 2009

Ms. Myriam Onyeabor
1755 South 4490 West, Suite A
Salt Lake City, UT

RE: ADMINISTRATIVE INTERPRETATION FOR PROPERTY LOCATED AT 1755 S. 4490 W., SALT LAKE CITY, UTAH (PLNBOA2009-01374)

Dear Ms. Onyeabor;

This letter is in response to the above-referenced application and property. The following information is based on a copy of the recorded plat for "Amended Portion of Lot 5 Phase V, Centennial Industrial Park" (the Plat), a copy Planning Commission staff report to approval of this subdivision, and on the ordinances of Salt Lake City, Utah. The Plat refers to recorded documents under the heading "Notice to Purchasers." These documents were not readily available and were not considered in this review of the Plat.

It is understood that the Plat is the subject of litigation between private parties (Utah Court of Appeals, Case No. 20070851 - CA). This information is intended simply to answer specific question posed to the Planning Division of Salt Lake City by Myriam Onyeabor.

1. The copy of the Plat illustrates Lot 1 as including 23,384 square feet. The Lot is generally illustrated as being 124 feet wide by 190 feet deep. This is the subdivision Lot 1 for the Plat. The copy of the Plat includes an area within double lines designated as "Lease space #1" of 5,850 square feet within Lot 1. This appears to be a potential building footprint, not a subdivision lot.

2. There is no common area designated, illustrated or depicted within Lot 1, or within any portion of the Plat. This is typical considering the Plat is referred to as "a Planned Development Subdivision" instead of a Planned Development Condominium.

3. There is one, 15-foot Public Utility Easement that runs along the pubic road frontages of 4490 West Street and 1730 South Street. This PUE is within Lot 1. There are no other easements, of any kind, illustrated on the Plat within Lot 1. Other easements may be referred to in the documents referred to in the Plat notes, but other potential easements are not illustrated on the Plat.

4. The copy of the Plat illustrates Lot 2 as including 15,554 square feet. Lot 2 is generally illustrated as being 81.83 feet wide by 190 feet deep. This is the subdivision Lot 2 of the Plat. The copy of the Plat includes an area within double lines designated as "Lease space #2 of 5,850 square feet within Lot 2. This appears to be a potential building footprint, not a subdivision lot.

5. There is no common area designated, illustrated or depicted within Lot 2, or within any portion of the Plat. This is typical considering the Plat is referred to as "a Planned Development Subdivision" instead of a Planned Development Condominium. [111]

6. There is a 15-foot Public Utility Easement along the frontage of 4490 West Street that is included within Lot 2. There are no other easements of any kind illustrated within Lot 2.

7. Both Utah State law and Salt Lake City Ordinance require a public hearing for amending a subdivision plat (Utah Code 10-9a-608 and Salt Lake City Subdivision Ordinance Section 20.31.080).

8. The above-referenced subdivision was approved as a Conditional Use for a Planned Development. According to Salt Lake City Ordinance, a new application is required for "Modification and Amendments" to Planned Development approvals (Section 21A.54.150 and 20.32.020).

9. Salt Lake City has no record of any modification to the Planned Development approval for the Plat.

10. It is a violation of Salt Lake City Ordinance to convey property contrary to the provisions of the subdivision ordinance. Such a violation is a class C misdemeanor (20.36.020).

11. The Planned Development approval for the Plat was granted as a Conditional Use. The Planned Development approval was for 15,000 square-foot lots. To sell lots of less than 15,000 square feet would be a violation of the Conditional Use approval. According to Salt Lake City

---

[111] 451 South State Street, room 4o6, Salt Lake City, Utah s41 1 1 p.o. box 1454bo, salt lake city, Utah s4 1 1 4-54bo telephone: b01-s35-77s7 fax: 8o 1-535-6 1 74 TDD: bo 1-535-6oz 1 www.slcced.com

ordinance, violations of a Condition Use permit "shall constitute grounds for revocation of the Conditional Use approval" (Section 21 A.54.100).

The above information constitutes my findings based on the documents and ordinances referred to.
If I may be of further assistance, please contact me at (801) 535-7757, or by e-mail at wilf.sommerkorn@slcgov.com. Thank you for your attention to this matter.
__/s/_____
Wilf Sommerkorn
Zoning administrator Salt Lake City planning
CC. Frank Fray, community economic development, Orion Golf Director, building services and licensing, Randy Sorenson, Glendale community council Posted to Web file.

Continued ...

APPENDIX K (3)

SUBDIVISION PERMIT

Abstract,Findings and Order

I, Verene Froisland being first duly sworn, depose and say that I am the Secretary to the Salt Lake City Planning Commission (451 South State Street, Room 406), and that on Thursday, August 6, 1998, Case No. 410-319 by Centennial Park, Ltd. was heard by the Salt Lake City Planning Commission. The applicant requested a conditional use for an industrial planned development located at 4463 West 1730 South in the Centennial Industrial Park Subdivision in an Industrial "M-1" zoning district. Preliminary subdivision approval is also requested for a seven lot plat amendment.

Legal description of property is as follows: Sidewell: 001The N 410FT OF LOT 5, CENTENNIAL INDUSTRIAL PARKPH V 5364-0938 5590-1576 6185-0070 6223-2894 8023-0413 8027-0606, 0609, 0612

It was moved, seconded and passed by unanimous or majority vote that the conditional use be granted.

_/s/_____Verene Froisland Secretary to the Planning Commission, STATE OF UTAH) ss County of Salt Lake)

__/S/__ Luann Calfa. Notary public residing at salt Lake Utah

IT IS THEREFORE ORDERED that approval be granted subject to the following conditions: 1. Three of the lots do not have frontage on a dedicated public street. 2 Three of the lots have approximately 15,500 square feet of lot area, which is less than the 20,000 minimum established in the zoning district.3. The landscaping buffer required along property boundaries interferes with theinternal circulation plan. The modified landscaping is indicated on the submitted plan.

THE FAILURE OF THE APPLICANT TO ABIDE BY THE CONDITIONS OF THIS CONDITIONAL USE SHALL CAUSE IT TO BECOME NULL AND VOID, WHICH IN EFFECT, IS THE SAME AS THE CONDITIONAL USE HAVING BEEN DENIED.

Action Taken By the Planning Commission on Petition No.410-319 at Its August 6 1998 Meeting. Dated In Salt Lake City Utah March 19 1999.

___/S/___Chairperson, Max Smith

___/S/_____Secretary,Verene Froisland

* END OF APPENDIX K*

APPENDIX L (1)

Onyeabor's motion to dismiss

THE LAW OFFICE OF GREGG K. STEPAN, LLC
9075 South 1300 East, Suite 102B
Sandy, Utah 84094 Telephone: 801-572-6969 Facsimile: 801-572-6970
Attorney for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY

CENTENNIAL POINTE PROPERTY OWNERS ASSOCIATION, Plaintiffs	) Filed Nov. 8th 2004 3.49PM) Salt Lake County)
v.	)
Myriam Onyeabor	) Civil No. 040918762
Defendant,	) Judge Stephen Henriod

MEMORANDUM IN SUPPORT OF MOTIONS TO DISMISS

Defendant Myriam Onyeabor, by and through its counsel The Law Office of Gregg K. Stepan, LLC, hereby brings the following Memorandum in Support of her Motions to Dismiss.

I. LACK OF STANDING AND SUBJECT MATTER JURISDICTION - RULE 12(b)(l)

A. Introduction. Defendant moves the court for an order dismissing the Plaintiffs complaint in its entirety. The grounds for this motion are that the Plaintiff, Centennial Pointe Home Owners Association,

Inc., lacks standing to bring suit, and therefore, this court lacks jurisdiction

over the subject matter pursuant to Rule 12(b)(l) of the of the Utah Rules of Civil Procedure.[1112] Plaintiff, formerly a Utah nonprofit corporation, was administratively dissolved on September 27, 2001, and the Plaintiffs statutory two year time period for reinstatement, under Section 16-6a-1412 of the Utah Code Annotated, has irreconcilably passed. As such, the Plaintiff is a non-existent legal entity, and therefore, Plaintiff lacks standing to bring suit, and this court lacks subject matter jurisdiction.

B. Argument.

1. Lack of Standing is a Jurisdictional Issue Appropriately Resolved in a Rule 12 Motion to Dismiss.

This court lacks subject matter jurisdiction over the Plaintiffs complaint pursuant to Rule 12(b)(l) of the Utah Rules of Civil Procedure because the Plaintiff lacks standing to bring suit. "Lack of standing is a Jurisdictional issue" that can be raised when it becomes apparent that the court lacks such jurisdiction. Harris v. Springville. 712 P.2d 188, 190 (Utah 1986). Thus, lack of standing is appropriately resolved in this Rule 12 motion to dismiss for lack of jurisdiction.

2. Plaintiff Does Not Exist. A Utah nonprofit corporation can be administratively dissolved by the

---

[1112] If it is more accurate, or appropriate, Defendant's Motion to Dismiss for the reason that this court lacks subject matter jurisdiction pursuant to Rule 12(b)(l) of the Utah Rules of Civil Procedure is brought, in the alternative, as a Motion to Dismiss for lack of personal jurisdiction over the Plaintiff pursuant to Rule 12(b)(2) of the Utah Rules of Civil Procedure.

Division of Corporations of the Utah Department of Commerce (the "Division") for, among other things, its

Failure to file its annual report with the Division or to pay its annual renewal fee. See UCA § 16-6a-1410(1) and (2). A Utah nonprofit corporation that has been administratively dissolved has only two years to apply for reinstatement. UCA § 16-6a-1412(l). A reinstatement, if completed within the two year period, is the only statutory mechanism that reestablishes the corporation and its right to conduct business "as if the administrative dissolution had never occurred." UCA § 16-6a-1412(4).

Plaintiff, Centennial Pointe Property Owners Association, Inc., formerly a Utah nonprofit corporation, was administratively dissolved, pursuant to Section 16-6a-1411 of the Utah Code Annotated, effective September 27, 2001. See Attached Printout of a Business Entity Search from the web site of the Division of Corporations of the Utah Department of Commerce; see UCA § 16-6a-1411(1) and (2). Further, the Plaintiffs statutory two year time period for reinstatement expired without a reinstatement on September 27, 2003, two years after the effective date of its administrative dissolution. Thus, the Plaintiff has been finally dissolved, and it does not exist as a legal entity.

3. The Administratively Dissolved and Not Reinstated Plaintiff Has No Standing to Bring a Suit.

A Utah nonprofit corporation that has been administratively dissolved and that has not filed for reinstatement within two years after the dissolution has no legal standing to bring a law suit. UCA§ 16-6a-1411(3)(a)and 16-6a-1412(l). See also Miller v.

Celebration Mining Co.. 29 P.3d 1231, 1239 n.3 (Utah 2001) (Howe, C.J., dissenting) (stating that a contract entered into by a
corporation three years after its administrative dissolution is void as to the corporation); Gas Pump, Inc. v. General Cinema Beverages of North Florida, Inc., 436 S.E.2d 207, 208 (Ga. 1993) (finding that a corporation that was administratively dissolved and not reinstated within the two year statutory period had no capacity to bring a law suit). The applicable statutes provide for the continuance of an administratively dissolved Utah nonprofit corporation only to "wind up and liquidate its affairs" and to provide certain notices to creditors. UCA § 16-6a-1411(3)(a). Further, an administratively dissolved Utah nonprofit corporation has two years in which it may seek reinstatement. UCA § 16-6a-1412(l). Read together, these two statutory provisions provide that the expiration of the two year period for reinstatement ends the nonprofit corporation's existence for any reason. See Gas Pump, Inc., 426 S.E.2d at 208-09 (holding, under corporate statutes substantially similar to the Utah statutes applicable in this case, that the statutes "provide a period of two years in which an administratively dissolved corporation can initiate activities necessary to the winding up and liquidation of its affairs and business. If it is not reinstated during that period, it can take no further action.").

As already set forth above, the Plaintiff, Centennial Pointe Property Owners Association, Inc., formerly a Utah nonprofit corporation was administratively dissolved effective September 27, 2001, and it was not reinstated within the statutory two year period. Thus, the Plaintiffs existence has irrevocably terminated for all purposes, and the Plaintiff has no standing to bring this law suit.

II. FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED - RULE 12(b)(6)

A. Introduction. Pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure, Defendant moves the court for an order dismissing the Plaintiffs complaint in its entirety. The grounds for this motion are that the Plaintiff, Centennial Pointe Home Owners Association, Inc., has failed to state a claim upon which relief can be granted. Each of Plaintiff s three causes of action arise out of Plaintiffs attempts to conduct normal business; however, Plaintiff has no right to conduct normal business. Plaintiff, formerly a Utah nonprofit corporation, was administratively dissolved on September 27, 2001. Therefore, under Section 16-6a-141 l(3)(a) of the Utah Code Annotated, Plaintiff has had no right to conduct any business since the time of its administrative dissolution on September 27, 2001. Further, because the Plaintiffs statutory two year time period for reinstatement, under Section 16-6a-1412 of the Utah Code Annotated, has irreconcilably passed, there can be no manner or mechanism to re-create or re-establish Plaintiffs right to conduct business after September 27, 2001. Thus, Plaintiffs complaint fails to state a claim upon which relief can be granted.

B. Argument.

1. Plaintiff, as an Administratively Dissolved Utah Nonprofit Corporation, Cannot Conduct Normal Business.

Section 16-6a-1411(3) of the Utah Code Annotated provides that:

(3) (a) Except as provided in Subsection (3)(b), a nonprofit corporation administratively dissolved continues its corporate existence but **may not carry on any activities** except as is appropriate to:

(i) wind up and liquidate its affairs under Section 16-6a-1405; and ——————(ii) to give notice-to give notice to claimants in the manner provided in §sections 16-6a-1406 and 16-6a-1407.
(b) If the nonprofit corporation is reinstated in accordance with Section 16-6a-1412, business conducted by the nonprofit corporation during a period of administrative dissolution is unaffected by the dissolution.

UCA § 16-6a-1411(3) (emphasis added). This clearly provides that the only activities that can be conducted by an administratively dissolved corporation must involve the winding up or liquidation of its affairs. An administratively dissolved corporation has not authority to conduct its normal business.

Plaintiff, Centennial Pointe Property Owners Association, Inc., formerly a Utah nonprofit corporation, was administratively dissolved, pursuant to Section 16-6a-1411 of the Utah Code Annotated, effective September 27, 2001. See Attached Printout of a Business Entity Search from the web site of the Division of Corporations of the Utah Department of Commerce. Further, the Plaintiff was not reinstated within the statutory two year time period for reinstatement. See id. Thus, pursuant to Section 16-6a-1411(3) of the Utah Code Annotated, the Plaintiff has had no authority to conduct any activities (except as necessary for winding up or liquidation) since September 27, 2001.

2. Each of Plaintiff s Three Causes of Action are Based on Plaintiffs Statutorily Unauthorized Attempts to Conduct Normal Business.

Plaintiffs First Cause of Action for Breach of Centennial Pointe's CC&R is based upon damages allegedly incurred by Plaintiff while Plaintiff was making assessments in the normal course of its

business, despite being in a state of administrative dissolution. See Complaint at ¶¶28, 41.44. there is no indication that the Complaint or in any other filing before this court that the Plaintiff made such s assessment in an attempt to wind up its affairs. Thus, pursuant to Section 16-6a-1411(3) of the Utah Code Annotated, no assessments could have been lawfully imposed by Plaintiff and no damages could have been lawfully incurred by Plaintiff. As such, Plaintiffs complaint for the First Cause of Action does not state a claim upon which relief can be granted.

As with the First Cause of Action, Plaintiffs Second Cause of Action for Lien for Nonpayment of Common Expenses is based upon damages allegedly incurred by Plaintiff while Plaintiff was making assessments in the normal course of its business, despite being in a state of administrative dissolution. See Complaint at ^ 28, 49, 50. There is no indication in the Complaint or in any other filing before this court that the Plaintiff made such assessments in an attempt to wind up its affairs. Thus, under Section 16-6a-1411(3) of the Utah Code Annotated, no assessments could have been lawfully imposed by Plaintiff and no damages could have been lawfully incurred by Plaintiff. As such, Plaintiffs complaint for the Second Cause of Action does not state a claim upon which relief can be granted.

Plaintiffs Third Cause of Action for Injunctive Relief is based upon actions taken by Plaintiff or its representatives, acting in the normal course of its business, to access certain areas on the Defendant's property, despite the Plaintiff being in a state of administrative dissolution. See Complaint at f^f 54-56. There is no indication in the Complaint or in any other filing before this court that the Plaintiff or its

representatives made attempted to access such areas in the course of winding up the Plaintiffs affairs. Thus, under Section 16-6a-1411(3) of the Utah Code Annotated, the Plaintiff and its representatives had no legal authority to access such areas. As such, Plaintiffs complaint for the Third Cause of Action does not state a claim upon which relief can be granted. 3. Plaintiffs Right to Conduct Normal Business after September 27, 2001 Cannot Be Reestablished or Recreated.

An administratively dissolved Utah nonprofit corporation has two years in which it may seek reinstatement. UCA § 16-6a-1412(l). A reinstatement, if completed within the two year period, is the **only** statutory mechanism that reestablishes the corporation and its right to conduct business "as if the administrative dissolution had never occurred." UCA § 16-6a-l 412(4).

,1 As already set forth above, the Plaintiff, Centennial Pointe Property Owners Association, Inc., formerly a Utah nonprofit corporation, was administratively dissolved effective September 27, 2001, and it was not reinstated within the statutory two year period. Thus, pursuant to Section 16-6a-1411 and 1412, the Plaintiffs authority to conduct its normal business has been and will always remain irrevocably terminated for all purposes since September 27, 2001.

Further, because the Plaintiffs existence has been terminated for all purposes (see Section I, supra) and because the Plaintiff has had no authority to conduct its normal business since September 27, 2001 and Plaintiff cannot revive its authority to conduct normal business (see Section II.B.L, supra), no rights of the Plaintiff are in existence which might be asserted by a new corporate entity that might be

formed to avoid a dismissal of this Complaint nor by a member or director of the Plaintiff. Even if some rights of the Plaintiff were in existence (which they are not), the Plaintiff would have no authority, for the same reasons, to transfer, at this time or any time, any such rights to any other person or entity.

III. MOTION TO VACATE PRELIMINARY INJUNCTION

A. Introduction. Defendant moves the court for an order vacating in its entirety the Preliminary Injunction issued by the court in this case during a hearing on October 18, 2004. If the Plaintiff's complaint is dismissed, there is no complaint to which any preliminary injunction can be associated, and thus, the Preliminary Injunction must be vacated.

B. Argument.

Because the Plaintiffs existence has been terminated for all purposes (see Section I, supra) and because the Plaintiff cannot revive its authority to conduct normal business (see Section II.B.1., supra), the Plaintiff has no authority or standing to request a Preliminary Injunction in this case. Dated this 8th day of November, 2004.

THE LAW OFFICE OF GREGG K. STEP AN, LLC

_/s/_____

By: Greg K. Stepan

Attorney for defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2004,1 served the foregoing **APPEARANCE OF COUNSEL** by causing a true and correct copy thereof to be mailed, via United States Mail, postage prepaid, addressed to the following parties:

Ray M. Beck Edward T. Vasquez

Cohne Rapp port Segal PC

P o box 11008
SLC UT 84147

__/s/_____
Greg Stepan

APPENDIX L (2)

Onyeabor's Reply memorandum

THE LAW OFFICE OF GREGG K. STEPAN, LLC
9075 South 1300 East, Suite 102B
Sandy, Utah 84094 Telephone: 801-572-6969 Facsimile: 801-572-6970
Attorney for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY

CENTENNIAL POINTE PROPERTY OWNERS ASSOCIATION, Plaintiffs	) Filed Dec 13 2004) Salt Lake County)
v.	)
Myriam Onyeabor	) Civil No. 040918762
Defendant,	) Judge Stephen Henriod

DEFENDANT'S REPLY MEMORANDUM IN OPPOSITION TO (I) PLAINTIFF'SMEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND (II) PLAINTIFF'S MOTION TO AMEND AND SUBSTITUTE PARTIES

Pursuant to Rule 7(c)(l) of the of the Utah Rules of Civil Procedure, Defendant replies in opposition to (i).Plaintiff s Memorandum in Opposition in Defendant's Motions to Dismiss and_ (ii)- Plaintiff s Motion to Amend and Substitute Parties.

I. INTRODUCTION

Plaintiff's arguments against dismissal lack merit. These motions cannot be resolved through a substitution of parties, as a matter of liberal pleadings and judicial economy, as Plaintiff would have this Court believe. See Plaintiffs Memorandum in Opposition ("Plaintiffs Memorandum") at 2, 7 and 13. It is a well-settled principal of law that Corporations exist and have powers **only** pursuant to statute. See, e.g., Weyeth Hardware & Manf. Co. v. James-Spencer-Batement Co.. 15 Utah 110, 47 P. 604 (Utah 1897) ("A corporation is a mere creature of law, and has such powers only as are expressly granted by the state . . . ."). Plaintiff apparently wishes that this Court ignore the nonprofit corporation enabling statutes that are applicable in this case. By statute, the nonprofit corporation in this case had no authority to "carry on any activities" (see UCA § 16-6a-141 1(3)). Defendant's motions to dismiss should be granted.

II. PLAINTIFF IGNORES THE APPLICABLE ENABLING STATUTES

A. Corporations have no legal right to carry on activities if administratively dissolved. By statute, the nonprofit corporation in this case had no authority to "carry on any activities" (see UCA § 16-6a-141 1(3)). Plaintiff did not respond directly to this statute nor to the cases did Defendant cite interpreting this statute in support of Defendant's Motions to Dismiss. In fact, Plaintiffs admit that the corporation in this case cannot be reinstated. See Plaintiffs Memorandum at 12. Instead, Plaintiff relies on a case involving an **unincorporated** entity under the Utah Name Statute. See Plaintiff' s Memorandum at 8-10 (citing *Graham v. Davis County Solid Waste Management An Energy Recovery Service District*, 979 P.2d 363 (Utah Ct. App. 1999). Plaintiff mistakenly believes that the principals of liberal pleading relied upon in Graham can overcome the clear

dictates of the nonprofit corporation statutes of this case. Graham is distinguishable from this case because Graham did not involve an incorporated entity and the statutes governing incorporated entities. As such, Graham should not be relied upon by this Court. It is a well-settled principal of law that Corporations exist and have powers **only** pursuant to statute. See Weyeth, supra.

B. A dissolved nonprofit corporation that has no right to "carry on any activities" possesses no rights to transfer to some other person or entity. As a basic matter of logic, you cannot give away something that you do not possess. Yet, that is essentially what the Plaintiff desires in this case: transfer to a successor the non-existent rights of the dissolved Association. Besides being logically impossible, such a course of action would render the applicable enabling statutes completely meaningless. An administratively dissolved Utah nonprofit corporation has two years in which it may seek reinstatement. See UCA § 16-6a-1412(l). A reinstatement, if completed within the two year period, is the **only** statutory mechanism that reestablishes the corporation and its right to carry on activities. See UCA § 16-6a-1412(4). Allowing the corporation's rights to carry on activities to somehow reappear and be transferred to another after the two year reinstatement deadline would render meaningless the two year reinstatement deadline in the statute. However, "Utah courts have a duty to interpret statutes so that they will not be rendered meaningless." In re E.H., 880 P.2d 11, 13 (UT Ct. App. 1994). Thus, there can be no successor to the rights of the dissolved Association.

III. NO PARTY, OTHER THAN THE ASSOCIATION, HAS THE RIGHT UNDER THE CC&Rs TO MAKE ASSESSMENTS AGAINST LOT OWNERS AND TO SEEK AN ACCOMPANYING LIEN FOR NONPAYMENT.

____Under the-CC&Rs, assessments and liens for nonpayment of assessments—be issued and collected **only** by the Association. See CC&Rs at §§ 7.6(a), 8.1, 8.6 and 8.7. This provision makes sense—allowing one owner, acting alone; to make an assessment against another owner would allow obvious opportunity for abuses. Thus, pursuant to the specific dictates of the CC&Rs, the Defendant has a contractual obligation to pay assessments **only** to the Association. The Association, however, was dissolved and had no legal right to "carry on any activities" (see UCA § 16-6a-1411(3)) during the time period when the assessments at issue were made by the non-existent Association. To now require the Defendant to recognize and pay assessments to someone other than the Association would render the nonprofit corporation enabling statutes meaningless—it essentially would give the Association the right to make assessments when it had no right to "carry on any activities." Thus, during the time period of the dissolution, Defendant can have no obligation to pay any assessments for expenses incurred on behalf of the dissolved Association. Further, allowing a lot owner to step into the shoes of the dissolved Association, for the express purpose that the Defendant be held liable for expenses incurred on behalf of the dissolved Association, would squarely contradict the Utah Supreme Court's specific finding that:

> As to corporations that have been suspended and not reinstated, we hold that officers and directors

> who continue the business of s suspended corporation are personally liable for all debts and liabilities arising from those operations that are a continuation of the types of activities the corporation performed.

Murphy v.Crosland, 915 P.2d 491, 495 (Utah 1996) (quoting Steenblik v. Lichfield, 906 P.2d 872, 878 (Utah 1995)). Here, Mr. Raille was an officer and director of the Association and was making assessments upon Defendant on behalf of the non-existent Association. As Murphy indicates, Mr Raille, not the Defendant, should be responsible for his own negligence regarding the lapse of the registration of the Association. Defendant did not allow the Association to be administratively dissolved, as such; she should not bear the burden of the consequences.

IV. CC&Rs ALLOW AN AGGRIEVED LOT OWNER TO ENFORCE THE CC&RS "IN A PROPER CASE." LEBR IS NOT AGGRIEVED AND THIS IS NOT A "PROPER CASE."

Under the CC&Rs, an **"aggrieved"** owner, **"in a proper case",** can bring an action against another owner (see CC&Rs at § 18.2, emphasis added). LEBR is not aggrieved, and this is not a proper case. As discussed above, neither LEBR (and its owner Mr. Raille) nor any other lot owner has the authority under the CC&Rs right to make and collect assessments and ask for a lien for nonpayment of assessments. Further, as also discussed above, the rights of the Association in the CC&Rs cannot be assumed by any other party because to do so would render the enabling statutes meaningless and violate Utah Supreme Court precedent in Murphy. Thus, this case clearly would not be a "proper case" to allow LEBR to enforce the

Association's rights to make assessments and request a lien. Further (and suspiciously), LEBR (the proposed substitute Plaintiff) and its owner Mr. Raille have never attempted to act individually in this case until this point.Based on the original Complaint, all causes of action in this case, including the requested injunction for access to the utility room, are based upon actions taken by Mr. Raille or other individuals who were purporting to act at all times on behalf of the Association. See, e.g., Original Complaint at §§54-56. Thus, LEBR and Mr. Raille are not truly aggrieved within the meaning of the CC&Rs. Further, allowing Mr. Raille at this late date to essentially impose onto the Defendant Mr. Raille's own liability for acting on behalf of a dissolved Association (see Murphy, supra) would clearly not be a "proper case"

THE LAW OFFICE OF GREGG K. STEP AN, LLC
_/s/_____ Gregg Stepan attorney for Defendant

APPENDIX L (3)

Respondent's Motion to substitute

Jeffrey L. Silvestrini (Bar No. 2959)
RayM. Beck (Bar No. 3798) Edward T. Vasquez (Bar No. 8640) **COHNE, RAPPAPORT & SEGAL P.C.**
257 East 200 South, Suite 700 P.O. Box 11008
Salt Lake City, Utah 84147-0008 Telephone
(801) 532-2666 Facsimile (801) 355-1813
Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT

OF SALT LAKE COUNTY

CENTENNIAL POINTE PROPERTY OWNERS ASSOCIATION,	) **PLAINTIFF'S REPLY**) **MEMORANDUM IN**) SUPPORT **OF MOTION**) **TO AMEND AND TO**) SUBSTITUTE) PARTIES
v.	) Oral argument Request
Myriam Onyeabor	) Civil No. 040918762
Defendant,	) Judge Stephen Henriod

Plaintiff Centennial Pointe Property Owners Association and proposed substituted Plaintiffs LEBR Associates, LLC and Centennial Pointe Property Owners Association, Inc. (registered on November 29, 2004), by and through their counsel, COHNE, RAPPAPORT & SEGAL P.C., hereby bring the following Reply Memorandum in Support of Motion to Amend and to Substitute Parties

ARGUMENT

I. ALLOWING PLAINTIFF LEAVE TO AMEND TO SUBSTITUTE PARTIES IS APPROPRIATE AND WARRANTED.

This Court plainly has the authority to allow Plaintiff leave to amend to substitute the parties in this matter to cure the defect in its Complaint. The Utah Court of Appeals' decision[1][113] in *Graham v. Davis Co. Solid Waste Mgmt. & Energy Recovery Special Serv.*, plainly shows that it is appropriate, given Utah's liberal pleading rules, and in the interest of judicial economy to allow Plaintiff leave to amend. 1999 UT App 136,^ 16, 979 P.2d 363. Defendant attempts to distinguish *Graham* on the conclusory bases that *Graham* involved a unincorporated association, and that, pursuant to statute, a dissolved nonprofit corporation has no authority to carry on any activities. *See* Defendant's Reply Memorandum at 2. However, the unincorporated association in *Graham* was expressly precluded from bringing or maintaining a lawsuit. A review of the Assumed Name Statute cited by the court of appeals in *Graham* expressly states that a business that has not complied with the statute *"shall not sue, prosecute, or maintain* any action, [or] suit... in any of the courts of this state." Utah Code Ann. § 42-2-10(1) (emphasis added). The original plaintiff in *Graham* plainly did not have either the authority or the standing to bring the action. Further, the original plaintiff in *Graham* did not have the authority to maintain the action by seeking leave to amend. Nevertheless, the court of appeals held that leave to amend was "a permissible means of remedying

---

[113] 'In its original Memorandum, Plaintiff mistakenly referred to *Graham* as a Utah Supreme Court case.

the deficiencies" in the complaint. *Graham,* 1999 Ut App 136 at 116. This was due to the identity of interest between the original plaintiff and the substitute plaintiff and that the substitution would not "change] the ultimate liability sought to be imposed." *Id* at f 16, 18.

Here, Plaintiff has admitted that it was administratively dissolved. Similar to the unincorporated association in *Graham,* Plaintiff is attempting to cure the deficiency in its Complaint. This will be accomplished if this Court allows Plaintiff leave to amend its Complaint. Further, as set out in Plaintiffs original Memorandum, the substantial identity of interest between Plaintiff and the proposed Plaintiffs makes the substitution wholly proper and warranted. Defendant's attempt to distinguish *Graham* based on the type of business entity is superficial. The court's reasoning and analysis in *Graham* are plainly applicable to the present matter.

A. Plaintiff Is Allowed Leave To Amend As A Matter Of Course.Defendant has not answered Plaintiffs Complaint. Defendant's Motion to Dismiss is not a "responsive pleading" under Rule 15 of the Utah Rules of Civil Procedure. *See Heritage Bank & Trust v. London,* 770 P.2d 1009, 1011 (Utah Ct. App. 1989). Pursuant to Rule 15(a), a party may amend his pleading once as a matter of course before a responsive pleading is served. *See* Utah R. Civ. P. 15(a). In *Heritage Bank,* the court went so far as to explain that the "language of the rule entitles a party to amend [,] . . . [this holds true even where the party with a right to amend . .. Moves for leave to amend." *Id.* As such, Plaintiff is entitled to leave to amend, and, consistent with the court of appeals' ruling in *Graham,* substitution of the parties is an appropriate amendment. Accordingly, Plaintiff respectfully

requests that this Court grant its Motion for Leave to Amend.

II. LEBR IS A PROPER PARTY TO THIS LITIGATION. Centennial Pointe's CC & Rs plainly provide that an aggrieved owner can bring an action for sums due, damages, and injunctive relief. *See* Centennial Pointe CC & Rs 18.2. LEBR is the quintessential aggrieved owner. First, Defendant is delinquent on her Centennial Pointe assessments, meaning that Centennial Pointe's owners, including LEBR, have had to shoulder additional costs to ensure that Centennial Pointe continues to be maintained. Quite simply, for example, someone needs to ensure that snow is plowed, the common areas are maintained, light bulbs in the common areas are replaced, and the accessways are maintained. That someone has not been Defendant, who has been content to let that burden fall on LEBR and the other Centennial Pointe owner.

Second, as an owner, LEBR has an express access easement to the utility room located on Defendant's property. Defendant has interfered with that easement. Defendant has also interfered with LEBR's easement to use and enjoy Centennial Pointe's common areas. In all, the CC & Rs vest authority in an aggrieved owner to bring suit and LEBR is plainly an aggrieved owner.

CONCLUSION

For the foregoing reasons, Plaintiff and proposed Plaintiffs respectively request that this Court grant Plaintiffs Motion to Amend and Substitute Parties.

DATED this 21st day of December, 2004___/s/_____

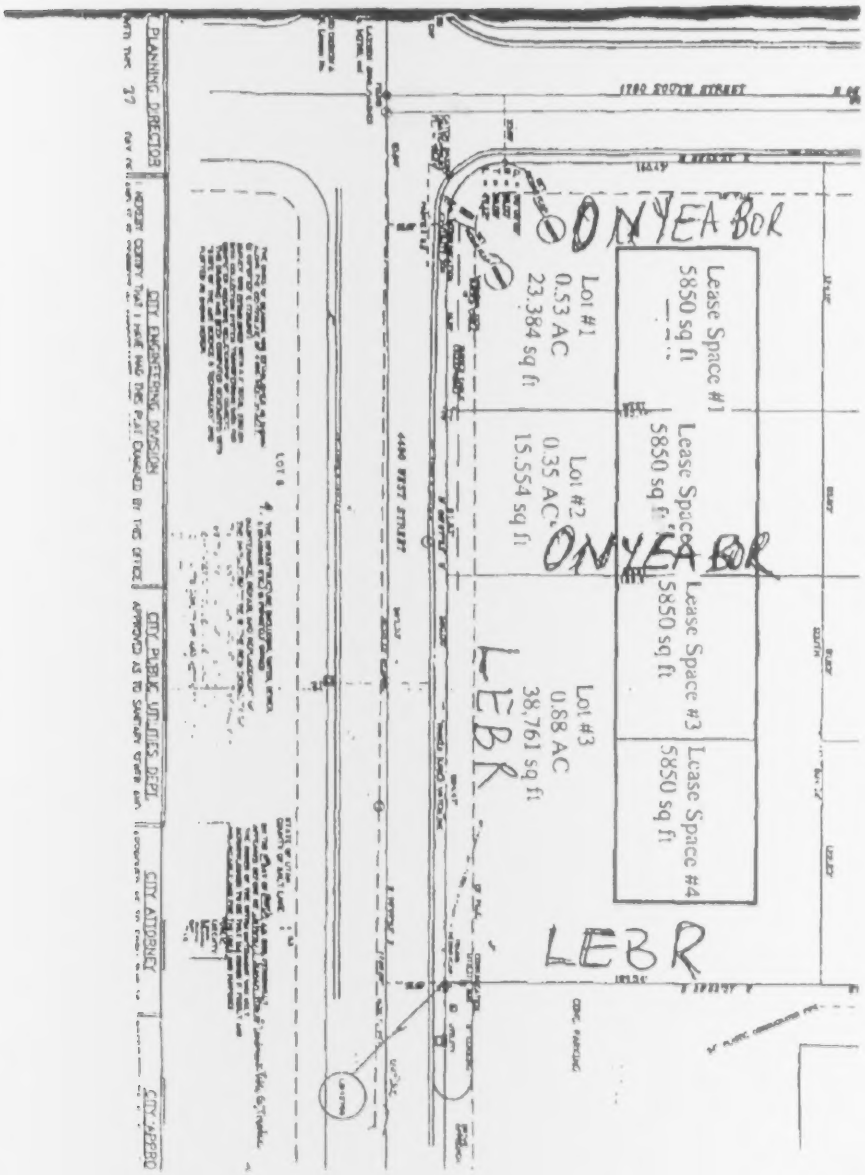
Jeffrey L Silvestrini, Ray beck, and Edward Vasquez.

Attorneys for proposed plaintiffs.

END OF APPENDIX L

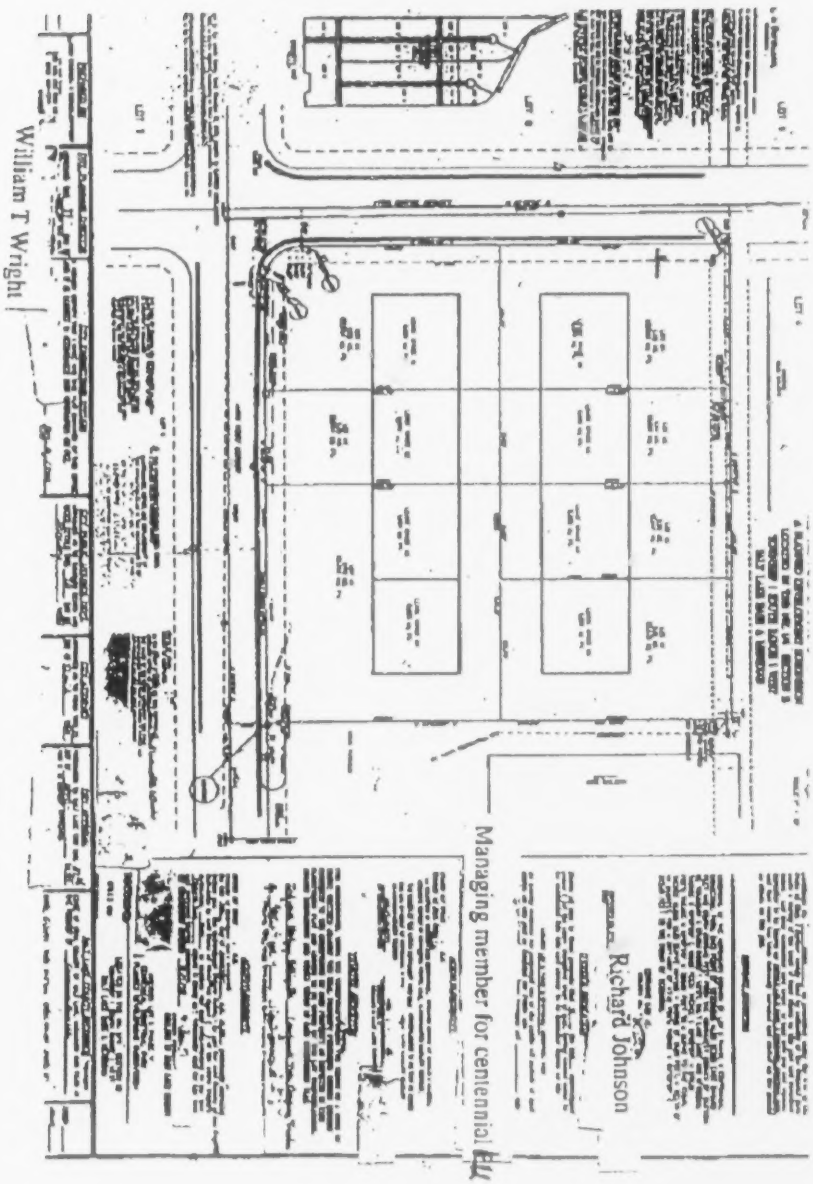
APPENDIX M (1)

PLAT MAP CENTENNIAL POINTE –(Record at 1453)
Continued …



APPENDIX M (2)

PLAT MAP-CENTENNIAL POINTE



APPENDIX M (3)

PLAT MAP- CENTENIAL POINTE
DEDICATIONS- ACKNOWLEDGMENTS- Right corner
Continued...

****

SURVEYOR'S *CERTIFICATE*

Do hereby certify that *I am* a *Registered- civil engineer and Land* Surveyor. And that I hold Certificate No. 152956 as prescribed under the laws *of the State of Utah. I further certify* that *by authority of the* Owners, / have made a survey of *the* tract *of* land shown on this plat and described below, and have subdivided said tract *of* land into lots and streets, hereafter to be known as AMENDED LOT 5 PHASE 5 CENTENNIAL INDUSTRIAL PARK and that same has been *correctly surveyed* and stated on the ground as shown on this plat

BOUNDARY

Beginning At The Northeast Corner of Lot 5 Phase 5 Centennial Industrial Park, Said Point Of Beginning Also Being East 2441.08 Feet And South 2855.42 Feet From The Northwest Corner of Section 18, Township 1 South Range 1 West, Salt Lake Base And Meridian) Thence S 00'07'23' E 410.00 Feet) Thence S 89'52'37' W 375.00 Feet Thence N 00'07'23' W 380.00 Feet To A Curve To The Right) Thence Along Said Curve Having A Radius Of 30.00 Feet, A Delta Of 90 Degrees, For A Distance of 47.12 Feet) Thence N 89*52'37" E 345.00 Feet To The Point of Beginning.

CONTAINS 3.52 AC. 153,556 sq.

SEPTEMBER 24, 1996

****

OWNER'S DEDICAION

Known all men by these presents that the undersigned owner ( ) of the above described tract of land, having caused same to be subdivided into lots and streets to be hereafter known as the AMENDED LOT 5 PHASE 5 CENTENNIAL INDUSTRIAL PARK do hereby dedicate for perpetual use of the public all parcels of land shown on this plat as intended for Public use. ID witness has hereunto set this 28th Day of September A.D, 1998

_/s/_____Donald Sanborn

Managing member for Centennial Pointe LLC

ACKNOWLEDGEMENT S.

State Of Utah County Of Salt LakeOn This Day Of March 1999 Personally, Appeared Before Me Donald R. Sanborn, Managing Member of Centennial Pointe LLC A Utah Limited Liability Company. The Signer Of Written Instrument Who Duly Acknowledged To Me That He Signed For And On Behalf Of Centennial Pointe, LLC, A Utah LIMITED Liability Company as managing member Thereof.

07-17-2000 .

/s/ Michele Liechty

Notary public residing in salt Lake County

TRUStEE DEDICATIQN

THE UNDERSIGNED, BEING THE

IndyMac Mortgage hlding LandMark Title

/s/ maria roa /s/ Jeffrey Jensen

THE UNDERSIGNED, BEING THE

BENEFICIAry9trustee) RY/UNDER THE TERMS OF A DEED OP TRUST, SECURED AGAINST THE REAL PROPERTY DESCRIBED HEREIN, HEREBY CONSENTS TO THE SUBDIVISION OF SAID PROPERTY AS DEPICTED IN THIS SUBDIVISION PLAT AND AGREES TO BE BOUND BY THE LOT CONFIGURATIONS, STREET DEDICATIONS AND OTHER TERMS OF SAID SUBDIVISION PLAT.

ACKNOWLEDGEMENT

STATE OF UTAH : S.S.
County of Los Angeles

On the 7th Day of march, 1999,. *personally appeared before* me, the undersigned *Notary* Public, in and for said County *of Los Angeles,* in said State of CA, The signer *( ) of the* above Owner's Dedication one in number, who duly acknowledged to me that Maria Roa signed it *freely* and voluntarily and for the uses And purposes therein mentioned. Commission expires; 11/7/ 1998

.___/s/ Debra Kay Myers Notary Public Residing in salt l Lake County

AMENDED LOT 5 PHASE V CENTENNIAL INDUSTRIAL PARK A PLANNED DEVELOPMENT SUBDIVISION

LOCATED IN THE NW. 1/4 SECTION 18
TOWNSHIP 1 SOUTH RANGE 1 WEST

SALT LAKE COUNTY RECORDER

APPENDIX M (4)

PLAT: CENTENNIIAL POINTE Upper Left Corner--
Public Utility Easements.

PUBLIC UTI
EASEME

LOT 9

Notice to Purchasers
EXCEPTIONS

1. TERMS,COVENANTS,CODITIONS,RESTRICTIONS,EASEMENTS AND/OR RIGHTS OF WAY AS CONTAINED IN THAT CERTAIN INSTRUMENT DATED DECEMBER 30, 1968 AND RECORDED DECEMBER 30, 1968 AS ENTRY NO. 2272001, IN BOOK 2718, AT PAGE 631, AND BY THAT CERTAIN CORRECTION INSTRUMENT RECORDED MAY 20, 1969 AS ENTRY NO. 2288494 IN BOOK 2755 AT PAGE 600 OF THE OFFICIAL RECORDS.

2. THE FOLLOWING EXCEPTION AND RESERVATION CONTAINED IN THAT CERTAIN SPECIAL WARRANTY DEED RECORDED JUNE 14, 1996 AS ENTRY NO. 6668489, IN BOOK 7838 AT PAGE 2278 OF THE OFFICIAL RECORDS WHEREIN KILLIAN & SCHUMACHER APPEARS AS THE GRANTOR AND CENTENNIAL PARK, LIMITED APPEARS AS THE GRANTEE, TO WIT:

"GRANTEE FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, AGREE TO JOIN IN ANY PETITION TO SALT LAKE CITY THAT MAY REASONABLY BE REQUIRED TO ESTABLISH A LOCAL IMPROVEMENT DISTRICT FOR STREET LIGHTING IN CENTENNIAL INDUSTRIAL PARK AND GRANTEE FURTHER AGREES, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, TO ASSUME GRANTEE'S PROPORTIONATE SHARE OF ASSESSMEN LEVIED BY SALT LAKE CITY UPON THE LANDS DESCRIBED IN EXHIBIT "A" FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF SAID STREET LIGHTING SYSTEM."

3. AVIATION EASEMENT TO SALT LAKE CITY CORPORATION FOR A PERPETUAL AND ASSIGNABLE EASEMENT FOR THE FREE AND UNRESTRICTED PASSAGE OF AIRCRAFT OF ANY AND ALL KINDS HEREAFTER DEVELOPED FOR THE PURPOSE OF TRANSPORTING PROPERTY THROUGH THE AIR, IN, THROUGH, ACROSS AND ABOUT AIRSPACE, OVER THE REAL PROPERTY DESCRIBED IN SCHEDULE HEREOF, AS DISCLOSED BY INSTRUMENT DATED JULY 7, 1939 RECORDED JULY 10, 1939 AS ENTRY NO. 7029037, IN BOOK 8 PAGE 595 OF THE OFFICIAL RECORDS.

APPENDIX N

AFFIDAVIT- ALEXANDER UDEH (Record at 2143)

MYRIAM N ONYEABOR (Pro se)
P.O 521297
Salt Lake City UT. 84152
801-259-1195
FAX 801-487-9005

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY STATE OF UTAH

CENTENNIAL POINT
PROPERTY OWNERS ASSOCIATION AND LEBR. ASSOC. LLC.
v.
MYRIAM ONYEABOR.
Plaintiff.,
v.
Bruce Raile and Jennifer Clark

Donald Sanborne.

Case No 040918762
Judge Faust

STATE OF UTAH:
Alexander Udeh, being duly sworn and upon oath and states the following:

1) That I am over the age of 18, capable and competent to testify in a court of law.

2. That I have personal knowledge of the incidents Involved in this case and can testify to them

3. That I am Myriam Onyeabor's son and that we purchased Centennial Pointe Lot 1and Lot 2 when I was 13 years old.

4. That I have helped my mother on several occasions on Lots 1 and 2.

5. That I was witness to such occasions when my mother would ask employees of Sun optics/LEBR to move their vehicles out of the entries into Lot 1and 2 and the employees would refuse to do so or ignore my mother

6. That one day, in 2004, I went to the warehouse with my mother and there was a Qwest man parked by the utility room.

7. My mother said to me that they have put some more signs on the building after the Police took the old signs down only days before.

8. That my mother and I walked up to the Qwest man ands my mother asked the Qwest man if he knew who put the signs on Lot one indicating it belonged to Qwest Communication or Centennial Pointe, and the Qwest man said that it was the guys down there, pointing towards Mr. Raile's building

9. That my mother, asked if Qwest Communication knew anything about the signs or if he was connected to putting signs on her Lots. My mother asked, "Is Qwest saying my building belongs to them too?"

10. That my mother [Myriam Onyeabor] asked if she could speak to the Qwest man's supervisior and if the Qwest man could put the Qwest man's supervisor on the phone

11. My mother only asked the Qwest man about the signs and never asked the Qwest man not to do his job or get out of the utility room. My mother pointed to the wires saying, "That is what belongs to Qwest communication not the building."

12. That instead of calling the supervisor, the Qwest man called Mr. Raile and his wife, and they both came out shouting at my mother, saying she had no right taking down the signs.

13. I have heard Mr. Raile yelling at my mother a few times right on Lots 1and 2 and I wanted to confront him but my mother held me back.

14. The day that the Qwest man was there, Raile and his wife were yelling at my mother, charging at and following my mother, because she took down the signs they left on her building.

15. That I wanted to go and make them stop but my mother pulled me towards the back of the building to avoid confrontation.

16. As a result of how Mr. Raile and his workers are treating my mother at Centennial Pointe, she has been through bouts of illness, whereas she used to be a very strong healthy woman.

17. That I was supposed to take over the warehouse when I turned 18 but my mother does not want my brother or I down there anymore by ourselves because Mr. Raile might come to pick fights with us.

18. That my mother's mental condition after the business closed was very bad.

19. That my mother would sit sometimes and gaze for hours and hardly eat for days.

20. That I was forced to calmly uncles and tell them that my mother would sit in her s room for days and cry.

21. That my mother took care of us prior to her conflict with Mr. Raile and his employees but now I was taking care of my mother.

22. That my mother was very sick for a few days after the business closed.

23. That my mother has completely changed since her illness and since the company closed.

24. That my brother, my mother and I always mowed the lawn when the workers, David, Robinson, David's brother Gary or all the other workers could mow the lawn.

25. That my younger brother, my mother and I have had to mow the lawn an entire summer when my mother's workers were too busy to do it.

26. That Mr. Raile knew we were the ones mowing the lawn because I have seen him go by several times as we worked.

27. That in 2004, an employee of home depot had sold my mother and I some substance to put on the lawn in order to prevent insects. The same

employees asked us to leave the 'stay off the grass' signs to protect humans and pets.

DATED THIS__22_____DAY OF June, 2007

___/s/_____

Alexander Chinedum Udeh

SUBSRIBED AND SWORN to before me, this 22 day of June 2007

___/s/_____

Mathew shell
NOTARY PUBLIC

State of Utah
Salt Lake City Utah 84111
My commission expires August 10 2010

APPENDIX O

AFFIDAVIT OF Myriam Onyeabor (Record at 1478)

MYRIAM N ONYEABOR (Pro se)
P.O 521297
Salt Lake City UT. 84152
801-259-1195
FAX 801-487-9005

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY STATE OF UTAH

CENTENNIAL POINT PROPERTY OWNERS ASSOCIATION AND LEBR. ASSOC. LLC.
v.
MYRIAM ONYEABOR.
Plaintiff.,
v.
Bruce Raile and Donald Sanborn.

Judge Randall Skanky

Case No 040918762

STATE OF UTAH:
Myriam Onyeabor, being duly sworn and upon oath deposes and states the following:

1) That I am over the age of 18, capable and competent to testify in a court of law.
2) That I have personal knowledge of the incidents involved in this case and can testify to them.
3) That I am the owner of Lots 1 and 2 of Centennial Pointe Industrial Park, a Salt Lake City subdivision
4) The problems between Mr. Raile/LEBR/Sun Optics started soon after they moved into Lot 3 and

also ended up occupying the areas around my Lots one and two, acting as though my property were their recreational area.

5) That I immediately complained about it in 2001, to the owner of Lots 4, 5, 5, 7, Mr. Bezdijan, who assured me that due to their number (perhaps 30 workers) they might just be in the process of settling in and to give them time.

6) By 2001, my workers and I were now having problems with them and I asked them to vacate our front doors and they would adamantly state that Sun Optics/Mr. Raile/LEBR or whoever was in charge told them that it was all 'community property.' And they were not to pay attention to me or my workers. They would adamantly refuse to move their vehicles, even when we had emergencies.

7) That I was now having heated arguments with Raile/Sun Optics/LEBR at the meetings as I explained that they were impeding my business which was a warehouse by blocking the doors.

8) That I remember asking them specifically several times why they did not like the property they bought and went ahead and bought it anyway.

9) That I was the first to buy property on Centennial Pointe and got the best because it is a case of "first come first serve."

10) That I referred Mr. Raile constantly to the Plat which is very clear about "LOTS."

11) That in 2001, Mr. Bezdijan called me on a weekend, stating that he had to see me because it was an emergency. I gave him my address and said he could come.

12) That Mr bezdijan told me that he and Mr Raile were having arguments because of the "communal maintenance," we had going on at that time. He said, "This man just roars."

13) That I agreed with Mr. Bezdijan that Mr. Raile was controlling, intrusive and not keeping his numerous workers on their premises. Mr. Bezdijan complained about boxes flying all over his property with the Sun Optics label on them. I promised to vote with him.

14) That these grievances were expressed at the emergency meeting that followed. So, we finally, agreed that everyone do their own maintenance and stay out of everyone else's business and life.

15) That it was obvious that Raile was upset about the development. He expressed something to the effect that he wanted all the lawns to look alike but we did not have his kind of money and we told him that. He also said there had to be easeways and flow of traffic.

16) His Lots had exits into the streets and I asked him to make his own arrangements with what he bought rather than attempting to force the rest of us into accommodating his needs.

17) That I felt he wanted the entire premises designed for him in order to accommodate his

colossal trailers. I suggested the trailers come through his entry and through the back rather than disrupting everybody else's businesses.

18) That I felt that their needs should not interfere with my property rights and burden me.

19) That I had my very own designs and business needs too and that was why I invested that type of money in the property in the first place.

20) That the problems between owners simmered until it was clear that Bezdijan was going to sell his property.

21) That the LEBR/Sun Optics employees were now all over the Onyeabor property engaging in the some of the acts that I had referenced in the may 22 2002 letter (EXHIBIT 8). Things like leaving lunch scraps all over the Onyeabor property and even repairing a car right in front of my door.

22) Once again, the information I got from the workers of Mr. Raile/LEBR was that the establishment of LEBR/Sun Optics asked them to ignore our pleas and park and do as they pleased.

23) That in 2002 legal counsel asked me to write Raile/Sun Optics/ LEBR an official letter just in case I no longer had the protection that Paul Bezdijan provided me and Raile decided to resume the communal maintenance or harassing behavior.

24) That the letter officially stated that if Raile/Sun optics/LEBR were to maintain any part of

my property against my wishes, Raile/Sun Optics/ LEBR would have to pay.

25) That Mr Bezdijan later sold Lots 4, 5, 6 to Raile/sun Optics/ LEBR and soon after that, Mr. Raile became my "landlord and master." That Mr. Raile and sometimes his wife would come on numerous occasions, screaming, barking orders and insults at me, and humiliating me on my own property in a manner I had never been humiliated before.

26) That I was not even allowed to do the normal things a property owner, especially a property of price and caliber, could do. I went into my property and came out like a beggar, oftentimes to the giggles and mockery of LEBR's employees who had been told that I was crazy, that the property was actually theirs or "community property."

27) At that time, mental stress was a euphemism for what I really felt. My workers asked me if I really bought the property, so did my children and other family members.

28) By 2003 and early 2004, I was so depressed I started to avoid Centennial Pointe. I was not coming to work as often. Lawsuit was easy to talk about but every real estate attorney I spoke to had projected it would cost me $40,000-$100, 000 and a single mother does get involved in a lawsuit unless the money is in the bank and I put all my money in the building. So I put it off.

29) That Ms Clark had jumped into my office with the intent to fight me, and the reason there was no

fight was because I kept moving away from her, and avoiding her threatening gestures. That the name-calling was to provoke me even further and see if that would get me to fight.

30) That on August 13th of 2004, out of desperation I decided to get their attention by threatening to lock the utility room, show them I actually owned it and Mr. Raile sued me soon after that.

31) That I never locked the utility room

32) That I found out after the lawsuit that there had been a CC&R change in August 2000 at the request of Mr. Raile of LEBR/Sun Optics.

33) I hereby affirm my prior affidavit (here attached) with regards to the August CC&R [Restated].

34) That I still did not want the situation to escalate and offered LEBR/Sun Optics to accept the Plat of the City is still the binding document as to what we own. I offered that the CC&R of August be changed to reconcile with the Plat map or just resort back to the April CC&R, and accept the Plat has final say as to what we own. They refused the offers.

35) That in December of 2004, I was now in deep depression. I was so ill my family offered to come in and pay the mortgage. I had to close the company down and let go of my workers.

36) That for a woman like me to be crying while talking to men I knew in a business environment, as

well as in the presence of my sons, I raised to be strong men, indicates I had deteriorated to the lowest point of my life.

37) That my older son was supposed to take over the company after turning eighteen, so that I can return to teaching, but I don't dare send him over there until there is restraint on Mr. Raile.

38) That my children, my workers and I, had done my own maintenance on my two Lots until after the first hearing in front of Judge Henriod, when Mr. Raile insisted on doing it and we let him be.

39) That my first son, for whom this company was started is now disillusioned about taking it over afraid, as I am, about hostility from Plaintiffs

40) That every statement I made about my mental condition is backed by the fact that I am qualified in the areas of mental health and disorder and knew what was going on with me.

41) That when I did recover a little, I wanted to reopen my business but could not get a loan on the property because Mr. Raile had liens all over it.

42) That I am forced to do this testimony by myself because all the experts charge money and some need to be flown to Utah, and I do not have the funds to pay an expert.

43) That I leave it up to the discretion of the Court to either consider this to be my personal statement about what I went through, what decisions I had to made to overcome the mental trauma that I

experienced. Or perhaps, the court could view it as an expert opinion from Myriam Onyeabor. The Court may also view this as a simple self-report from Myriam Onyeabor and make a determination based on it. (statement attached to affidavit)

DATED THIS_____13____DAY OF December, 2006

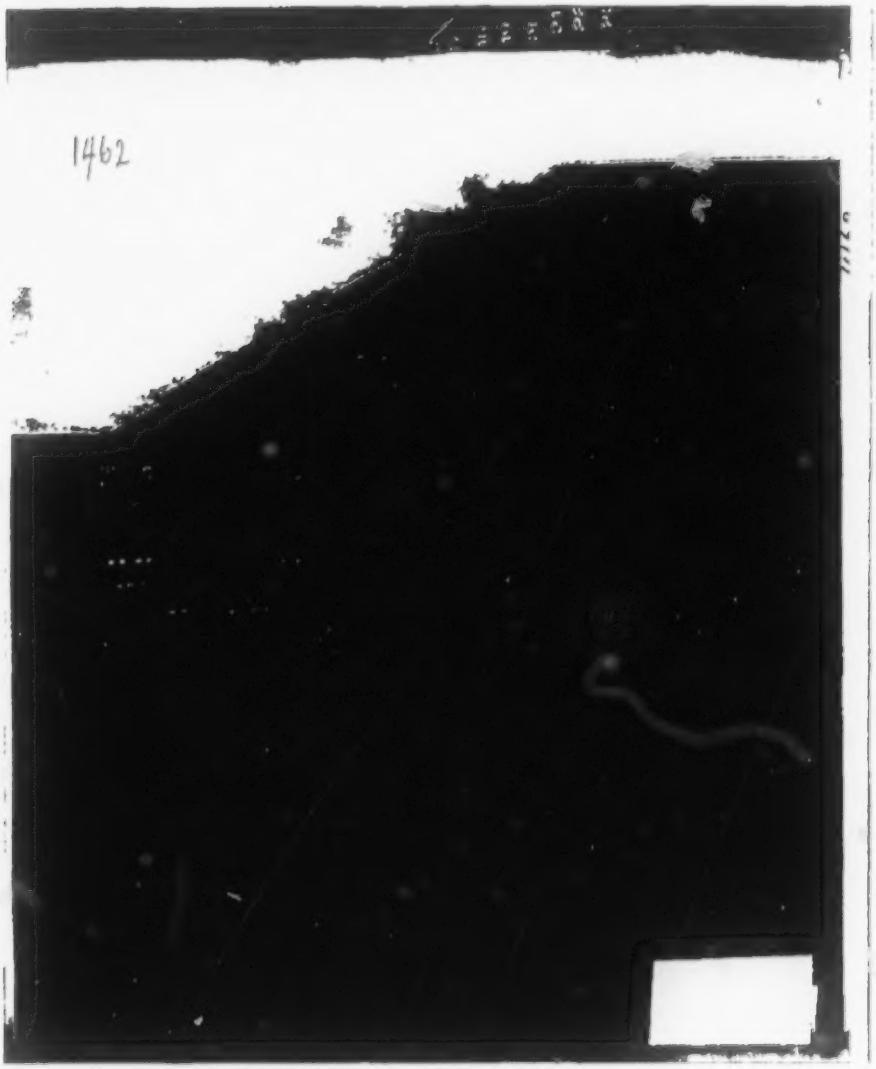
___/s/_____
Myriam Onyeabor

SUBSRIBED AND SWORN to before me, this 13 day of December 2006
___/s/_____

Frank F. Stringham
NOTARY PUBLIC

State of Utah
1355 east 5360 south
Salt Lake city Utah 84117
Oct 4th 2008
State of Utah

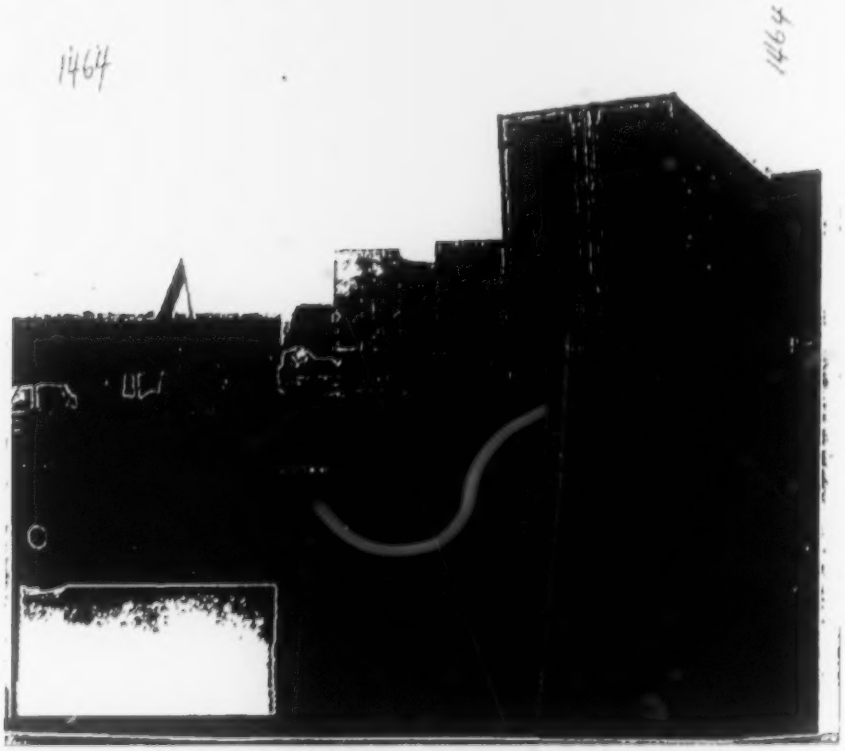
APPENDIX P #1



(Record at 1462)
LEBR'S COLLOSAL TRAILRS IN VARIOUS FORMS BLOCKADING ENTIRE PREMISES. CC&R 18.2 forbids trailers

Typical scenario.

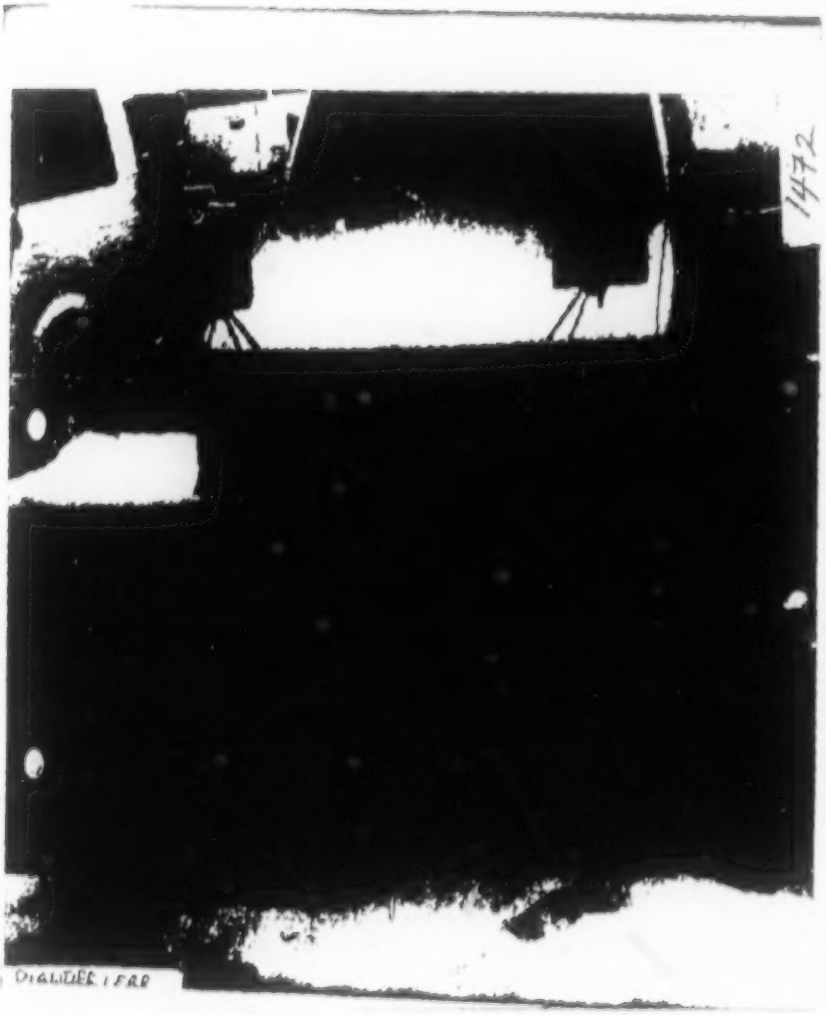
APPENDIX P #1
LEBR colossal trailers blockading entire premises



(Record at 1464)

The entire subdivision is "community property "for LEBR storage -Typical scenario. CC&R 18.2 forbids trailers

*****Other photos at addendum II, Exhibit 15-0pening Brief.**



(Record at 1472)

LEBR's utility vehicle right infront of Ms Onyeabor's front office. Photo was taken from office entrance. The spot is Onyeabor's property, LEBR calls it "community property" – LEBR employees often come in scores and refuse to move-Typical scenario.



(Record at 2163)

This is LEBR's vehicle blocking the entry into back of Onyeabor's building 2. The spot is part of Onyeabor's lot. LEBR says it is "common areas," they don't have to move." This is typical scenario.

*****This incident was supported by Onyeabor's supplemental affidavit 2, Addendum II, Exhibit 7. Opening Brief.**

APPENDIX Q

AFFIDAVIT OF JAMES WALKER (Rec. at 2148)

MYRIAM N ONYEABOR (Pro se)
P.O 521297
Salt Lake City UT. 84152
801-259-1195
FAX 801-487-9005

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY STATE OF UTAH

CENTENNIAL POINT
PROPERTY OWNERS ASSOCIATION AND LEBR. ASSOC. LLC.
v.
MYRIAM ONYEABOR.
Plaintiff.,
v.
Bruce Raile and Jennifer Clark

Donald Sanborne.

Case No 040918762
Judge Randall Skanky

STATE OF UTAH:
James Walker being duly sworn and upon oath and states the following

1) That I am over the age of 18, capable and competent to testify in a court of law.

2. That I have personal knowledge of the incidents Involved in this case and can testify to them

3 That I am the CEO of walker design Services, a Utah corporation.

4 That I am myriam Onyeabor's tenant at 1755 south 4490 west and have known her for two years now.

5 That my company had been building offices inside the building and just moved in over a year ago

6 That on July 27th 2006,I was approached by on Mr. Raile of Sun Optics /LEBR.

7 That Mr. Raile wanted to talk to m about Myriam Onyeabor.

8 That Mr. Raile said quite a few derogatory things about Myriam Onyeabor tome.

9 That Mr. Raile was condescending to Myriam Onyeabor

10 That he did not speak about her as though she were the landlord of her property.

11 That Mr. Raile made it seem as though he were the landlord of myriam Onyeabor's property and she were a tenant or subordinate.

12 That Mr. Raile seemed quite certain what Ms onyeabor could and could not do on her property.

13 That Mr. Raile was trying to influence my decision on whether or not to do business with Myriam Onyeabor.

14 That his very words with regards to the building were: You are not going to be buying the property because she owes me a Lot of money.

15 That I also felt that myriam Onyeabor should be the one to tell me those details if she cared to tell them to me.

16 That everything he said was an effort to influence my business decisions with Myriam Onyeabor, and so, I found it quite condescending to me personally.

17 That I have known MyriamOnyeabor for two years and she is a reliable, honest and understanding person, and so I decided to tell Ms Onyeabor about it.

18 That MyriamOnyeabor was extremely upset when I told her about it.

DATED THIS___3_____DAY OF December, 2007

___/s/_____

James Walker

SUBSRIBED AND SWORN to me, this 3 day of December 2007

___/s/_____

Lucie smith
NOTARY PUBLIC
4220 west 2100 south #A
Salt Lake City Utah 84114
My commission expires August 10 2010
State of Utah

APPENDIX R

MR. ROBERT MILL'S AFFIDAVIT (Record at 2131)

MYRIAM N ONYEABOR (Pro se)
P.O 521297
Salt Lake City UT. 84152
801-259-1195
FAX 801-487-9005

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY STATE OF UTAH

CENTENNIAL POINT PROPERTY OWNERS ASSOCIATION AND LEBR. ASSOC. LLC. **Judge Stephen Roth**
Case No 040918762

v.

MYRIAM ONYEABOR.

v.

Bruce Raile and Donald Sanborn.

STATE OF UTAH:

Robert Mills, being duly sworn and upon oath deposes and states the following:

1) That I am over the age of 18, capable and competent to testify in a court of law.

2) That I was an agent of Commerce CRG, a Salt Lake City based Realtor, at the time that these incidents occurred.

3) That Mr. Travis Healey represented Myriam Onyeabor in the purchase of Unit 1 and 2 and that Bryce Kelly represented Mr. Sanborn on Unit 1, and I represented Mr. Sanborn on Unit 2.

4) That I was aware that Myriam Onyeabor had hired Travis Healey/Commerce CRG to represent her in this purchase.

5) That subsequent to the sale of Unit 1 to Myriam Onyeabor, Mr. Sanborn hired Robert Mills/Commerce CRG to represent him and sell the rest of the Units in Centennial Point Industrial Park, on his behalf.

6) That I submitted bids, offers, counter offers from Travis Healey/Myriam Onyeabor to Mr. Sanborn and still have a file at Commerce CRG to affirm that.

7) That I delivered CC&R's to Travis Healey for him to deliver to his client, Myriam Onyeabor.

8) That we received an offer from Myriam Onyeabor on Unit 1 for $276,500.00 which Mr. Sanborn rejected because Unit 1 was the most valuable Unit of the complex.

9) That the parties renegotiated and agreed on a price of $330,000.00 for Unit 1.

10) That Myriam Onyeabor bought Unit *1* in April of 2000.
11) That Commerce CRG continued to market the rest of the project on behalf of Mr. Sanborn.

12) That Myriam Onyeabor called me in early 2005 telling me that she just heard that the CC&R of Centennial Point had been changed back in 2000.

13) That Myriam Onyeabor was sounded quite shocked.
14) That when Myriam Onyeabor asked me if the CC&R's were ever changed, that I told her that I did not think so, or that I could not remember them being changed.

15) That Later, when I contacted Mr. Sanborn to inquire about the CC&R's being changed, he reminded me that the CC&R's were changed at the request of Mr. Raile, before Mr. Raile of LEBR bought his property, and as a condition to buying his own property from Mr. Sanborn.

16) That I then contacted Myriam and let her know that I was reminded that they had been altered and that *I* didn't recall knowing the nature or scope of the changes.

DATED THIS__17th_____DAY OF November, 2005

___/s/_____

ROBERT MILLS

SSAUBSRIBED AND SWORN to before me, this ___17th day of November 2005

___/s/_____

Luanne Cutler
NOTARY PUBLIC

State of Utah
175 East 400 South Suite 700
Salt Lake City Utah 84111
My commission expires 06/12/2006

APPENDIX S

AFFIDAVIT OF TRAVIS HEALEY (Record at 2136)

MYRIAM N ONYEABOR (Pro se)
P.O 521297
Salt Lake City UT. 84152
801-259-1195
FAX 801-487-9005

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY STATE OF UTAH

CENTENNIAL POINT
PROPERTY OWNERS ASSOCIATION AND LEBR. ASSOC. LLC.

Case No 040918762
Judge Stephen Roth

v.

MYRIAM ONYEABOR.

Plaintiff.,

v.

Bruce Raile and Donald Sanborn.

STATE OF UTAH:

Travis Healey, being duly sworn and upon oath deposes and states the following:

1. That I am over the age of 18, capable and competent to testify in a court of law.

2. That I was an agent of Commerce CRG, a Salt Lake City based Realtor, at the time that these incidents occurred.

3. That I am an agent of Commerce CRG, LLC

4. That I was involved in the purchase of Myriam Onyeabor's property at 1755 south 4490 west and represented her.

5. That I hereby affirm the statements in my prior affidavit in this case.

6. That in addition to my prior statements, I would add that Myriam Onyeabor started complaining to me about Mr. Raile and his workers blocking the way into her building and bothering her ,way backing in 2001.

7. That she stated that Mr. Raile and his employees were mostly on her property and hardly on theirs.

8. That at one point in 2001,Myriam Onyeabor was so angry that she said that if this aggravations with Mr. Raile and his employees continued she would want her money back.

9. That I told her that the sale was complete and there was nothing I could do.

10. That I am also aware that the case escalated in 2003 and 2004, because Myriam Onyeabor called me and told me about it.

11. That on a few occasions, Myriam Onyeabor had been upset and crying over the phone , as we talked about how she is being treated, on her property, by Mr. Raile and his employees

12 That I remember her saying that she was being treated as if she were a second class on her own property.

13 That she seemed genuinely depressed, and stressed out about the situation.

DATED THIS_____13____DAY OF December, 2006

___/s/_____
Travis Healey

SUBSRIBED AND SWORN to before me, this 13 day of December 2006
___/s/_____

Luanne Cutler
NOTARY PUBLIC

State of Utah
175 East 400 South Suite 700
Salt Lake City Utah 84111